

**AGENDA
SPECIAL MEETING
CITY OF BANNING
BANNING, CALIFORNIA**

November 12, 2014
5:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

Per City Council Resolution No. 2010-38 matters taken up by the Council before 9:00 p.m. may be concluded, but no new matters shall be taken up after 9:00 p.m. except upon a unanimous vote of the council members present and voting, but such extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.

I. CALL TO ORDER

- Invocation – Merle Malland, Chaplain-Banning Police Dept.
- Pledge of Allegiance
- Roll Call – Councilmembers Miller, Peterson, Welch, Westholder, Mayor Franklin

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS

PUBLIC COMMENTS – *On Items Not on the Agenda*

A five-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public. (Usually, any items received under this heading are referred to staff for future study, research, and appropriate Council Action.) See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

CORRESPONDENCE: Items received under the category may be received and filed or referred to staff for future research or a future agenda.

The City of Banning promotes and supports a high quality of life that ensures a safe and friendly environment, fosters new opportunities and provides responsive, fair treatment to all and is the pride of its citizens.

IV. CONSENT ITEMS

(The following items have been recommended for approval and will be acted upon simultaneously, unless a member of the City Council wishes to remove an item for separate consideration.)

Motion: That the City Council approve Consent Item 1 through 6

Items to be pulled _____, _____, _____, _____ for discussion.

(Resolutions require a recorded majority vote of the total membership of the City Council)

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| 1. | Approval of Minutes – Special Meeting – 10/28/14 <i>(Closed Session)</i> | 1 |
| 2. | Approval of Minutes – Regular Meeting – 10/28/14 | 3 |
| 3. | Resolution No. 2014-80, In Support for March Air Reserve Base and the Naval Surface Warfare Center Corona | 24 |
| 4. | Resolution No. 2014-76, Approving the Projects for the Fiscal Year 2015-2016 Community Development Block Grant (CDBG) Program. | 43 |
| 5. | Resolution No. 2014-77, Awarding the Construction Contract for Project No. 2014-EL, Demotion of the Building Located at 215 E. Barbour Street. | 52 |
| 6. | Resolution No. 2014-78, Approving the Purchase of Two (2) 2015 Chevrolet 3500 Crew Cab 4 Wheel Drive Vehicles for the City of Banning Electric Utility Department | 145 |

- Open for Public Comments
- Make Motion

V. REPORTS OF OFFICERS

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| 1. | Resolution No. 2014-79, Awarding the Construction Contract for Project No. 2014-05, Sidewalk Repairs at Various Locations and Rejecting All Other Bids. Staff Report | 150 |
| | Recommendation: That the City Council adopt Resolution No. 2014-79: I.) Awarding the Construction Contract for Project No. 2014-05, Sidewalk Repairs at Various Locations to Hardy & Harper, Inc. of Santa Ana, CA in the Amount of \$73,905.00 and allowing a 10% contingency of \$7,390.50; and II.) Authorizing the Administrative Services Director to approve change orders within the 10% contingency. | |
| 2. | Resolution No. 2014-73, Amending the Contract Services Agreement between the City of Banning and the Romo Planning Group. Staff Report | 216 |
| | Recommendation: That the City Council: I.) Adopt Resolution No. 2014-73, Amending the professional Services Agreement between the City of Banning and Romo Planning Group, Inc. for Additional Planning Services for remainder of the contract period; and II.) Authorize the City Manager to execute the First Amendment with Romo Planning Group, Inc. on the form that is approved by the City Attorney; and III.) Authorize the | |

Administrative Services Director to make necessary budget adjustments for FY 2015.

3. Airport Land Use Commission (ALUC) Report – General Plan Amendment and Zone Change for 18 properties located in a Neighborhood Bounded by Hargrave, Barbour, Juarez and Westward Avenue.
 Staff Report 265
 Recommendation: **That the City Council hear an oral summary of the Riverside County Airport Land Use Commission (ALUC) staff report prepared for the subject project; and, then provide direction to staff regarding the application in order to support a finding of consistency from the Commission.**

4. Purchasing System
 Staff Report 306
 Recommendation: **Approve the Purchasing Policy Addendum (Policy No. B-23 (a) to prioritize government documents related to purchasing and provide methods for improving communication and transparency to the City Council related to contract signed within the City Manager’s authority.**

5. Consideration of a Resolution No. 2014-82 entitled: A Resolution of the City Council of the City of Banning Adopted to Immunize the City from Litigation and Entitle it to Recover Legal Costs of Frivolous Litigation by Ratifying the Expenditure of Monies for Measure J Education Outreach and Restating Banning’s Commitment to Comply with the Brown Act Consistent with the City’s Current Practices and Policies
 Staff Report 359
 Recommendation: **Approve Resolution No. 2014-82**

VI. ANNOUNCEMENTS/REPORTS (Upcoming Events/Other Items if any)

- City Council
- City Committee Reports
- Report by City Attorney
- Report by City Manager

VII. ITEMS FOR FUTURE AGENDAS

New Items – None

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials (Jan. 2015)
2. Discussion on how to handle loans or distributions to charities. (Midyear budget)
3. Discussion on how the City Council handles donations to the City. (Feb. 2015)
4. Grocery Cart Policy (In planning process.)

5. Workshop to discuss the future of the airport. *(Nov. 2014)*
6. Discussion regarding Public Works Committee and Ad Hoc Committees *(Jan. 2015)*
7. Discussion regarding City's ordinance dealing with sex offenders and child offenders. *(Feb. 2015)*
8. Discussion to move "Announcements" (events) up on the agenda after Public Comments. *(Nov. 2014)*
9. Discussion regarding flex scheduling to keep city hall open five days a week.
10. Discussion regarding Animal Control Services *(Midyear Budget)*
11. Discussion regarding Police Staffing *(Midyear Budget)*
12. Prepare a staff report regarding delinquent utility fees owed by the Banning Chamber of Commerce. *(Nov. 2014)*
13. Golf Cart Lanes
14. Bond Workshop *(Midyear Budget)*
15. Report on 33-day Billing Cycle
16. Report on process used to collect unpaid utility bills.
17. Verify what our City laws are in regards to public comment.
18. Report on Electric Rates
19. Report on Code Enforcement and taking care of vacant properties.

VIII. ADJOURNMENT

Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Thursday, 7 a.m. to 5 p.m.

NOTICE: Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to "share" his/her five minutes with any other member of the public.

Any member of the public may address this meeting of the Mayor and Council on any item which does not appear on the agenda, but is of interest to the general public and is an item upon which the Mayor and Council may act. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to "share" his/her five minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (951) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II]

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

10/28/14
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on October 28, 2014 at 3:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller
Councilmember Peterson
Councilmember Welch
Councilmember Westholder
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Homer Croy, Interim City Manager
David J. Aleshire, City Attorney
June Overholt, Administrative Services Dir./Deputy City Manager
Colin Tanner, Attorney – Aleshire & Wynder, LLC
Duane Burk, Public Works Director
Marie A. Calderon, City Clerk

CLOSED SESSION

City Attorney said the items on the closed session agenda are two cases of potential initiation of litigation pursuant to Government Code Section 54956.9 (d)(4); two matters of existing litigation pursuant Government Code Section 54956.9 (d)(1) from Robertson's Ready Mix, Lt., v. City of Banning and the Banning City Council; City of Banning Mayor Debbie Franklin, City of Banning Council Members Edward Miller, Art Welch, Don M. Peterson and Jerry Westholder – Case No. RIC 1409828; Personnel matters regarding recruitment of City Manager pursuant to Government code Section 54957; Real property negotiations pursuant to Government Code Section 54956.8 to confer with its real property negotiator Ann Lanphar, Attorney - Aleshire & Wynder, in regards to Village at Paseo San Gorgonio (APN: 541-181-009 thru 012, 541-181-024 thru 028, 541-183-001 thru 004 and vacated rights-of-way as depicted on Tentative Parcel Map No. 36285 regarding update on escrow status; and Labor negotiations pursuant to Government Code Section 54957.6 with City being represented by City Attorney and Administrative Services Director: negotiations are with International Brotherhood of Electrical Workers (IBEW) – Utility Unit and General Unit; and San Bernardino Public Employees Association (SBPEA).

Mayor Franklin opened the closed session items for public comments; there were none.

Meeting went into closed session at 3:01 p.m. For the record Councilmembers Peterson and Westholder did not participate in the discussion regarding the Village at Paseo San Gorgonio because of a conflict of interest. Meeting reconvened at 4:28 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 4:28 p.m.

Marie A. Calderon, City Clerk

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A regular meeting of the Banning City Council and a joint meeting of the City Council and the City Council Sitting in Its Capacity of a Successor Agency was called to order by Mayor Franklin on October 28, 2014, at 5:01 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller
Councilmember Peterson
Councilmember Welch
Councilmember Westholder
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Homer Croy, Interim City Manager
David J. Aleshire, City Attorney
June Overholt, Administrative Services Dir./Deputy City Manager
Duane Burk, Public Works Director
Alex Diaz, Interim Chief of Police
Heidi Meraz, Community Services Director
Fred Mason, Electric Utility Director
Tim Chavez, Battalion Chief
John McQuown, City Treasurer
Marie A. Calderon, City Clerk

The invocation was given by Daniel Pedraza, First Hispanic Baptist Church. Councilmember Miller led the audience in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney said the Council met in closed session. The two items of potential initiation of litigation were not discussed. In regards to the litigation matter regarding Robertson's vs. City of Banning a status report on the litigation was given on those two items and no reportable action was taken. With respect to personnel matter involving the recruitment of City Manager a status report was given and no reportable action was taken. Concerning the real property negotiations regarding the property at Village at Paseo San Gorgonio a status report was given and there was no reportable action taken. There is a public action on the agenda tonight relating to that matter. Concerning labor negotiations a status report was given on negotiations with the City's bargaining units and there was no reportable action taken on those items.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS

PUBLIC COMMENTS – *On Items Not on the Agenda*

Inge Schuler, resident of Banning addressed the Council stating that by now it has become quite apparent that there is an obscene amount of money being spent on two of our candidates for Banning City Council as well as on the defeat of Measure J. The publically acknowledged funds from Mr. Fields on the election of Mr. Westholder can't even raise a pimple on the derrieres of the big corporations behind the PAC's Inland Empire Taxpayers Association and Banning Citizens Against Unfair Taxes which is funded by Robertson's Ready Mix. For the record, available in the City Clerk's office, Mr. Westholder received \$20,000 from Mr. Fields his largest contributor. By contrast the significant donors for Mrs. Franklin and Mr. Moyer listed with the City Clerk are the Morongo Band of Mission Indians, Diamond Hills Auto Group (Mark and Christopher Leggio), and Pardee. The two PACs do not even have to disclose their donor's names per recent ruling of the U.S. Supreme Court. When one of our candidates professes that she does not know who contributes the lavish amounts spent on the two campaigners she is deluding herself and us, the citizens when a little digging can at least allow us to estimate the amounts that could fund the huge Franklin campaign sign that graces the west facing side of the large permanent advertising sign on the Highland Springs exit of the I-10 freeway. Approaching travelers to Banning must be impressed. The proclaimed ignorance by the candidates of their contributors raises an interesting question for the residents of Banning. How can these same oblivious candidates, if elected, then be trusted to be thoroughly knowledgeable about the financial issues facing the government of this city; one has to wonder. A little further digging into the mysterious funding reveals a very flush pack named Inland Empire Taxpayers Association which was founded by the more or less formerly remembered Chris Mann who now for a living raises money for political campaigns. Further sleuthing, per the Secretary of State website, reveals that that hugely influential groups like the Building Industry Association of Southern California and the Apartment Association of California Southern Cities have invested over half a million dollars in the Inland Empire Cities elections. Their motive deserves to be questioned. A great chunk of this investment funds the campaigns of candidates Mrs. Franklin and Mr. Moyer. Behind these two PACs is also an interesting connection to Diamond Hills and the brothers Mark and Christopher Leggio. Christopher Leggio is listed as a member of the finance committee of Diversified Pacific a development company of Jeffery Burum, Rancho Cucamonga, the Colonies and Crossroads and the parent company of Rancho San Gorgonio LLC that plans to develop the agricultural south side of Banning with fabulous affordable housing. She is sure that she has barely scratched the surface of this entangled group of bedfellows. Now the candidates know at least some of the sources of their campaign funds. Also, Robertson's just added \$100,000.00 to the \$54,000.00 already in the kitty to defeat Measure J.

Heather and Anna with Inland Behavioral and Health Services (IBHS) addressed the Council stating that IBHS is a company that was established in San Bernardino and have a total of three sites with three of them in San Bernardino and a brand new site in Banning, called Banning Community Health Center which has been open for about a year now. They have doctors there Monday through Friday from 8 a.m. to 5 p.m. She said that they help people sign up for Covered California and open enrollment is coming up soon on November 15th. They also help people sign up for Medical, food stamps, unemployment, and SSI. They try to reach out to the

community and help with the resources that are out there for the people. She invited the Council and the community to their National Breast Cancer awareness event on October 29th from 1 to 3 p.m. at 1070 E. Ramsey to support those who are fighting and those who have survived. They will be having a few speakers, professionals and some community members who have dealt with it face to face; it is all about supporting our community.

Dorothy Familetti-McLean addressed the Council regarding the Banning Stagecoach Days fundraiser. This is their first fundraiser and they did have a successful Stagecoach Days and do not have all of their bills in yet and when they finish they will give the Council and update on what happened. Their Pancake Breakfast fundraiser will be held on Saturday, November 1st from 7 to 11 a.m. at the Banning Community Center. The cost is \$7.00 per person and children under 6 are free with a paid adult. They want to make next year's event better than ever and need your support.

Maggie Scott resident of Banning addressed the Council thanking whoever took care of the problem on Hathaway. Now at the stop sign she can see how to get out. It was a big job and wonderful and commends whoever took care of that because it was a big help on that side of town. There is still a lot of work that needs to be done but this is a start. She said she called the City about another problem which is on the corner of Hathaway and Ramsey because people seem to dump their appliances and sofas wherever now and there is a sofa sitting on the corner as you come into town on that corner. She was put through to the police department and she doesn't know why but she never got in contact with anyone. She would like to have a number of whom she could call where there is a problem and then she won't have to bring that to the City Council and could just call and report things like that.

Michael DaVita resident and business owner here in Banning addressed the Council stating that his business is on Ramsey Street and he wanted to discuss some of the issues downtown. When he makes these comments and other people make comments are they actually acted upon or are we just venting here.

Mayor Franklin said that there is action taken on some of the items that can be addressed.

Mr. DaVita said two weeks ago when he was here he spoke about door-to-door sales people not having a business license and they are just making money off the people of the city of Banning and he really believes that they should have some type of restriction or license or even a one day permit to go door to door and make their sales in the city. He said he spoke to a couple of people on the Council about this and one said that these sales people should have some type of lanyard around their next with a tag saying there are permitted to do that and he feels that is a pretty good idea because he is paying taxes and he knows other business people in town are paying taxes and business license fees and he feels it should be a requirement and more enforcement if it is not done and the cost of the enforcement would be absorbed by the fees that are recovered. The other issue is skateboards on the sidewalks. He had someone today that walked out of his office and was run over by a kid on a skateboard. His injuries were not too bad but the potential liability for the City not having signs up saying there is no skateboarding on the sidewalk there could be some issues there. There has even been kids seen sliding down the rails in front of city hall on their skateboards on the weekend and he is not sure of liability there but he is sure if

somebody gets hurt, somebody is getting sued and as a taxpayer here in Banning he would hate to be the one to have to pay for that. The other thing is trash fees. He said he has been downtown on Ramsey a few doors down from the bar for the past eight and half years and every month he gets billed for trash services and he has never had a trash can and he brought this up all the way back when Brenda Salas was the Mayor. There is an ordinance he guesses that says you have to pay for City trash if you have a commercial service downtown if you have electricity and water and all that which he does have but he does not have trash service but has been billed an average of \$20.00 per month for eight and half years and he calculated that it came to over \$2,000 dollars that he has been billed for stuff that he does not get. Waste Management brought him a trash can a couple of times and within the next day or so it was stolen. They cannot keep it in the office and so they were told to put it in the alley and they are taken so there is no point in trying to keep it there so he bags up the office trash and takes it home since he pays for trash service at his home. In regards to Measure J that is probably the best thing that could happen in the city right now. So anyone watching at home vote yes on Measure J because it will benefit the City to get more officers and to pay for better quality employees for the city.

David Ellis said the first thing he would like to touch on is 33-day billing for our utilities. What is going on here? Google 33-day billing on utilities and all it talks about is corruption. It puts you up into another tier and your bill is outrageous; it is not fair. Look at all the dead lawns and the poor people that cannot afford to keep their houses cool. Now that we get on to talking about utilities, in 2005 the Council (Welch, Palmer, Machisic, Hanna, and Salas) took nearly a debt free utility and hawked the income stream in order to borrow \$42 million dollars. For that purpose they created the Banning Utility Authority. The Authority made clear representation to the bond holders that all utility bills will be collected; all utility bills will be collected. You can see the bond prospectus if you need to. The representation made to the bond holders allowed for no lead way for the Authority not to collect bills. Not the City Manager but the City Council Members are the overseers of the Utility Authority. Debbie Franklin was an officer of the Utility Authority the entire time the Chamber got free utilities. By not taking action Franklin defrauded the bond holders who relied on the bond prospectus when they made their investments. With this Franklin may have committed security fraud, a federal offense. The Security and Exchange Commission SEC should investigate this matter and he would strongly suggest that maybe we could get a staff report on 33-day billing; it's outrageous.

Diane Box, resident of Banning addressed the Council and displayed a flyer she received this weekend that says the Press Enterprise official position is vote no on Measure J. She also pointed out that she did contact the Press Enterprise and they knew nothing about it. They did not take an official stance on it and they are using their name fraudulently. She also addressed the lies that Robertson's has been spewing about the mine. The constant noise, the dust, and the lights she has been here before complaining about it. She said she lives up at the bottom base of the mountains and she can see them, she can see the dust coming at her house almost every day and especially when there is Santa Ana winds. They are a nuisance. Her cars and home are always covered in shoot from that plant. She digs out what looks like concrete from her gutters all the time and not to mention since they have moved here her family suffers from respiratory problems. Their excuse is that we live in the desert. The flyer has nothing but lies and they are also misleading the community in saying that the citizens are going to be taxed which is not true. They need to pay their fair share; they have been here long enough. They ripped off the city long

enough, they ruin our streets, they destroy our town, and they drive like bats out of hell down Hargrave to get on the freeway. They need to be shut down. The City actually needs to make them comply with the rules that are in place by the mining commission and they have to stop mining illegally and out of bounds. Everything that the environmental impact report cited them for needs to be fixed to protect our citizens from this gross polluter that has been running rampant for over 30 years. There is a resident that has lived here for over 30 years that has made over 90 complaints and not once have they been cited. The AQMD (Air Quality Management District) has a car with a logo on the side and Robertson's knows as soon as it hits that freeway and calls go in to water down the piles so they don't get cited. The spokesperson says that they know it is a problem and they have to send an unmarked car out there so they don't have that issue so they know it is a problem but they still haven't done it. Also for the person in the opinion section of the paper that says they make no noise they obviously don't live in Banning nor where they live up on the north east side. She said in regards to the gross and unfounded acquisitions of Jerry Westholder paying people to steal Moyer and Franklin signs, that is ludicrous. Seeing that many of his signs are missing as well should we start accusing Moyer and Franklin; grow up. She said that she did some checking on the opinion letters in the Record Gazette that are against Westholder they are all a member of Debbie Franklin's church, what a coincidence. Vote yes on Measure J and help the city of Banning. Get them to pay what they need to pay and yes, for Jerry Westholder, fix Banning.

Marilyn Miller resident of Banning addressed the Council stating that she has also been inundated with all these flyers saying "No on Measure J". She said that Robertson's mine has sent and will send out over \$150,000.00 dollars in ads completely distorting Measure J and the City is prevented by law from responding. This mining tax could bring in nearly a million dollars a year to our city that we so desperately need to increase our police force and improve other City functions. This is a common mining tax on mines only and will not cause any other business or resident one additional cent in tax. Contrary to what the ad claims this Council does not waste money. This Council has not spent money on political campaigns. It sent out a simple straightforward truthful unexciting letter that a few people probably bothered to read giving the facts about Measure J. Strict laws prevent the City from spending money on anything else but the law permits the mine to spend as much as it wants, say anything it wants, accuse our City Council of anything it wants; distortion, distortion, distortion. The ad argues that this is an unfair double tax. The mine in the past used to pay sales tax to Banning but cleverly they moved all the tax money to Corona and of course, Corona gave them a rebate by taking away Banning's rightful income from the mine. Right now they are paying nothing directly to Banning. This is so amazing that she felt compelled to give the following analogy. A company proposes that they dig rock and sand from her back yard and she notices that they have not paid for the damage they are doing. When she asks them they respond, "Well of course we are paying, we made a deal with your neighbor. We are paying them instead because they accept less." Ridiculous isn't it. By the way if a mining tax is so outrageous, why is Robertson's paying one to Redlands? The ad claims this mine will kill jobs however, this mine currently brings nothing to Banning but the taxpayers of Banning must bear the cost of the repair to the city streets damaged by their trucks. But for Redland's Robertson's built a special road for their trucks so that Redland's doesn't have their city roads destroyed. The latest ad she received reports household income, the average salary and home sales are lower in Banning than Riverside County. The ad then claims that this is because of our City government's waste which is another ridiculous statement. Does anyone

here believe that the cause of these economic difficulties in Banning is because of our Banning City government wasting money? How about blaming our City government for all the wars in the Middle East? Conversely though these numbers indicate how urgently Banning needs the tax money from the mine that they have avoided paying in the past. These numbers should make the mine more willing to pay their obligation to the rest of Banning. We need Measure J. Also, who is the guy in the ads for Measure J, does he live in Banning or is he just another pretty face. He may not live in Banning. The owner of Robertson's mine may not live in Banning but we live in Banning. It will be our own fault if we do not take advantage of this opportunity to provide for the services we need. Vote yes on Measure J and tell your friends and neighbors to do the same.

Marion Johnson resident of Banning addressed the Council stating that she lives in the area of Robertson's and has been up there for some 50 years and they have had problems ever since Robertson's has been there and they are serious problems. You never get rid of the dust even if the house is closed tight. To her it is dangerous because you are not just breathing dust but something from this rock that is over there and it is dangerous to your health. They seem to be financing all of these "no" ads and many people should listen or read carefully or find some information on what they are reading because some people just take what they read as gospel without checking and it is sad to see things like that happening. As far as all of the advertising that has been going on in the city in regards to campaigning and in regards to the people petitioning to be on the Council or any other position if she had the money that people have put into some of the things that they have done about all of the untruths and the slander she would put it towards trying to explain to people actually what is happening. Don't believe it and find out what the truth is and let's get this show on the road. Let's do a job here and stop all of this. Like she said if she had money to do something she would have tried to educate people on things that have been said and were incorrect and printed in a way that you would believe is true. She asked the public to think about what is happening and think about Banning and work together to build Banning up and stop tearing it down.

CORRESPONDENCE – None

PRESENTATIONS

1. Introduction of New Employees and swearing in of Sergeants

Chief Diaz said he is here to present a new addition to their department Office Brenton Bulrice and also he is very proud to present new promotions for their department and Officer Vincent Avila has been promoted to Staff Sergeant and Corporal Joe Feola has been promoted to Staff Sergeant also. Chief Diaz made the following introductions:

- Officer Brenton Bulrice was born in Riverside, California and at the age of 17 joined the U.S. Army. He spent 12 years active duty serving three tours in Iraq and three tours in Afghanistan. He is married to Wendy Barbosa Bulrice and they have a son Jackson age 4 and daughter Leila age one. Office Bulrice attended the Riverside County Sheriff's Basic Academy and graduated in August of this year and is currently working on his Bachelor of Science in Criminal Justice degree. He looks forward to working on the Banning Police Department team and hopes to use his experience abroad in the army protecting the citizens of Banning.

- Sergeant Vincent Avila has been employed with the Banning Police Department since August 2006 and has worked the following assignments: Patrol, Detective Bureau, Field Training Officer, School resource Officer and Reserve Coordinator. In 2012 he received his Criminal Justice Bachelor's Degree from California Coast University. Away from work he enjoys spending time with his wife Esther and children Vincent, Michael and Emma. His next goal is to obtain his Master's Degree in Business Administration and continue his career with the Banning Police Department.
- Sergeant Joe Feola has been employed with the Banning Police Department since October 1995. He has worked the following assignments: Range Master, Field Training Officer, and as part of the Emergency Tactical Unit. He was born and raised in Riverside County and is married and has two boys and the youngest is currently in the army. Sergeant Feola enjoys playing sports, riding motocross and going shooting with his two boys. His goals are to assist in making this department the best that it can be and hopes to make it to retirement and run his own business.

At this time the City Clerk sworn in Sergeants Avila and Feola. Meeting recessed and 5:41 p.m. and reconvened at 5:47 p.m.

CONSENT ITEMS

Mayor Franklin pulled consent Item No. 5.

1. Approval of Minutes – Special Meeting – 10/14/14 (*Closed Session*)

Recommendation: That the minutes of the special meeting of October 14, 2014 be approved.

2. Approval of Minutes – Regular Meeting – 10/14/14

Recommendation: That the minutes of the regular meeting of October 14, 2014 be approved.

3. Report of Investments for September 2014

Recommendation: That the City Council receive and file the monthly Report of Investments.

4. Approval of Accounts Payable and Payroll Warrants for Month of September 2014

Recommendation: That the City Council review and ratify the following reports per the California Government Code.

Motion Welch/Miller to approve Consent Items 1 through 4. Mayor Franklin opened the item for public comments; there were none. **Motion carried, all in favor.**

Mayor Franklin said that Councilmembers Peterson and Westholder will recuse themselves in the discussion of Consent Item No. 5 because of a conflict of interest.

5. Approve Final Parcel Map No. 36285
(Staff Report – Duane Burk, Public Works Director)

Director Burk gave the staff report stating this is the approval of the final map and related documents and authorizing the City Clerk and the City Engineer to sign said map. This map has been submitted for review by the City Attorney's office, multiple different engineering edifications, and the vacation of the street has been completed. This map will then be recorded with the CC&Rs (Conditions, Covenants and Restrictions) which have been approved through the City Attorney's office. In attendance are the Acting Community Development Director Brian Guillot and the proponent Arthur Pearlman if the Council has any questions.

City Attorney Aleshire added that they have received a release signed by the developer and the Council sub-committee knows the extensive process that they went through. In the agreement there is a provision that requires the release of any disputes before all the instruments are recorded and with further correspondence with the attorney they have received that release. All of the past issues have been resolved and there are no disputes between the parties. Moreover the CC&Rs have been completed and they have worked extensively with the developer to make sure that they have provisions that reflected the interest of the parties and also the conditions of approval that the Council had approved. They anticipate that all of these documents are going to be received by Ann Lanphar in his office and think that they will be able to record them in the next several days. City Attorney Aleshire said that he spoke to a couple of the Council Members concerning the status of the hotel review process and in speaking with Mr. Pearlman before the meeting they had hired a couple of brokers and contacted 16 different hotels and think they have completed that process but they are looking forward to putting together a written report and giving that to the sub-committee and going through that with the sub-committee the contacts that have been made. He said that Mr. Pearlman and his company did not undertake that themselves, it was undertaken through two different brokers. City Attorney Aleshire said he knows this has been a really long road and at various times it has been very frustrating to all parties but feel that we have had a great working relationship with Mr. Pearlman and his team through this process and we are excited to have finally pulled everything together.

Director Burk said that on page 28 of the agenda packet it says, "At this point the developer has not submitted the required securities for this project." He said that today the developer did bring in the property securities.

Councilmember Miller said that he is delighted and he is sure the rest of the Council is delighted that we are at this stage and we can proceed forward with this project. At this time he gave some background information on the project. It has been a very long process and as a result some people have said that the Council is not pro-business and that is not true. We are extremely pro-business and extremely pro-Banning and it is our duty to obtain the best possible deal under any circumstances and he believes that the Council has done that and he thinks that Mr. Pearlman is satisfied and the Council is satisfied that we have an excellent project that both satisfies his needs as a developer and ours as a City Council devoted to improving Banning.

Councilmember Welch echoed what Councilmember Miller just said. He also wanted to thank Art Pearlman and his staff and City staff. This has been a long journey but he thinks everyone has had an opportunity to voice questions and concerns and make recommendations to the project. He is very happy to see this come to fruition because he thinks it is really going to be a plus and an upgrade in helping us to develop some of the downtown area.

Mayor Franklin opened the item for public comments.

The following people spoke in favor or against or had some questions or concerns or general comments in regards to this item *(any written comments handed to the City Clerk will be attached as an exhibit to the minutes)*:

- David Ellis asked how the residents in town will prosper from the new project and is it going to generate any sales tax or income for the City? It is a little concerning that we spent taxpayer's money to buy property and that we don't get a return as it was supposed to bring us.
- Diane Box stated that she doesn't know what the Council and Pearlman agreed on but she hopes it is not any more county buildings. She just hopes it is something that our citizens can benefit from and hopes it is a good deal.
- Fred Sakurai stated that this project has been sitting here for a long, long, long time. There has been so many nitpickers, contract negotiations, looking at details and throwing up roadblocks. It is about time that we all said let's get the show on the road.

City Attorney Aleshire responded to the question in regards to how the City would prosper in regards to the hotel use and sales tax off of some of the other uses. He went into some detail in regards to the hotel use and how the developer tried to get a hotel. He said in the retail marketplace you can have an idea, you can have something that sounds great but if you can't find the tenants, you have to have a plan B. We have been fortunate enough to be dealing with a developer who was able to move from plan A to plan B and Plan B involves basically creating some office uses that will be occupied by people that where we have the courthouse across the street we have people who will come for tenants that can be in these buildings and yes, there will be some county uses in these buildings that will have employees. The belief is that with that sort of activity downtown this will allow us to be successful in terms of getting restaurants and other sorts of uses. So the entire plan hasn't been thrown out. Basically the hotel use has not worked, we have come up with a substitute use for the hotel and the other parts of the plan in terms of retail/restaurant those uses are still part of the plan. As opposed to leaving the property sitting vacate for another five to eight years we have an architecturally superior product going in and we have a business plan that in this current environment seems like it would work to bring more people to downtown.

Motion Miller/Welch to approve Consent Item No. 5, to approve Final Parcel Map No. 36285. Motion carried, all in favor with Councilmembers Peterson and Westholder not voting.

Councilmembers Peterson and Westholder returned to the Council Chambers.

Joint Meeting

Mayor Franklin recessed the regular City Council meeting and called to order a joint meeting of the Banning City Council and the Banning City Council Sitting in Its Capacity of a Successor Agency.

REPORTS OF OFFICERS

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1. Banning Cultural Alliance: Outcome of Audit & Status Report
(Staff Report – David Aleshire, City Attorney)

City Attorney Aleshire stated that this item involves the Banning Cultural Alliance an entity that the Banning Redevelopment Agency contracted with for a number of years to try and encourage activity in downtown Banning. There have been some issues over time and then brought up concerning the contract with the Banning Cultural Alliance. The Grand Jury at one point in time did an audit and had a number of findings concerning the Cultural Alliance. The relationship goes back to 2005 and the total amount of money paid by the Redevelopment Agency in support of the Banning Cultural Alliance basically over a 6 year period was almost a million dollars (\$997,243.28). The Banning Cultural Alliance through annual contracts with a whole range of events and activities that they put on in the city the early year contracts were not well documented and that was part of the Grand Jury's concern. He said that when they became the City's attorney they developed very extensive contracts that had very specific obligations that the Cultural Alliance was required to undertake. When the audit was performed it was to study the period of July 2010 through June 2012. During that period of time the audit found out that in general the grant and expenses were for the benefit of the City and that money was spent for the programs that were identified in the contracts that were prepared and that the services that were required were carried out appropriately. There were several areas where there were insufficient records presented by the Cultural Alliance to validate all of the expenses. The audit report that was prepared by Willdan found that there was approximately \$72,000.00 worth of expenses which had insufficient documentation and the audit suggested to the Council that you should ask the Banning Cultural Alliance to pay you that money and that you should hold it pending the Cultural Alliance's ability to come up with additional documentation to support the \$72,000.00 and if they couldn't come up with that documentation, then of course the City would keep it. The Cultural Alliance has disagreed with those audit findings but that is still the result that we have in terms of the audit. The Council has asked the City Attorney and he knows that people have noted that there have been some closed sessions when they talked about this and the results of the closed sessions was to recommend that we come forward with this report so that the public would be fully aware of the status of this discussion. He said they sent a letter requesting the payment and the Cultural Alliance has disagreed with their results and has not been willing to make the payment. A period of time has passed now so it appears that they are not going to make a payment and at this point in time the Council has a decision to make and the decision is whether to simply let the matter go and by doing the audit we did our best of trying to identify the situation. Or, if the Cultural Alliance will not make a payment should we take a legal action concerning trying to collect that money. He said that they have basically told the Council privately and now reporting publically, our estimate is that it would cost at least \$50,000.00 in attorney fees to pursue the matter to try to get a judgment against the Cultural Alliance but they have also done an asset search and it does not appear that the Cultural Alliance has resources that are significant so the problem is that we would pay almost as much as the amount of the debt to potentially get a judgment which would not be collectable. So that is obviously something of a dilemma to be in at this point in time. The other aspect is that the money that was contributed towards the Cultural Alliance was from the Redevelopment Agency and at this point in time if we were to recover any monies because of the dissolution of redevelopment any monies recovered should go back to the taxing agencies under the redevelopment law. There is actually a requirement that the Successor Agency has a fiduciary duty to pursue debts of the Successor

Agency so we are not in a position to just walk away from potential amounts that are owed the Successor Agency. However, the law also provides that there is an Oversight Board and the Oversight Board is supposed to make judgments. If we were to pursue the debt, we would actually ask to get redevelopment dollars to pay the legal expense. Since it is an Agency debt we would not pursue it with General Funds of the City. We would ask the State to give us tax increment money to basically pay for the litigation cost so in essence what they would recommend tonight which they think is appropriate is to forward this matter to the Oversight Board and tell them that you understand that this debt might not be worth pursuing. He said that their recommendation to the Council is to tell the Oversight Board you are willing to pursue it if they will pay the legal expense to pursue it and put it up to the Oversight Board and let them do what they feel is appropriate. Your only obligation at this point is to pursue your fiduciary duty on behalf of the taxing agencies but the Oversight Board could reasonably conclude that this is not a debt worth pursuing and decide not to pursue it.

There was Council and City Attorney dialogue in regards to the dates of the audit and why it didn't go back to the date when the Grand Jury said the Cultural Alliance owed \$166,000.00, why did the sitting Council in 2010 forgo collecting that debt amount of \$166,000.00, in regards to the \$72,677.00 why is that amount of money collectable, why didn't the Cultural Alliance pay rent for the building at 128 and 130 N. San Geronio Ave., and of the \$997,243.28 of redevelopment funds which is to be used to create jobs and sales tax do we have anything in town that now creates jobs and sales tax.

Mayor Franklin said a lot of the questions are being asked tonight that were asked in the past but one of the things that she thinks the City Attorney is asking them tonight is just to give direction as to where they are going from this and if she is correct, we have one of two choices that are listed to either pursue it through the Oversight Board or to let it go and she just wanted to make sure that is what the Council is being told.

City Attorney Aleshire said one objective tonight was to have a public report because there has been a lot of discussion of this through the years and the two ideas going from here are more or less to drop it because we've sent the letter and given them deadlines and no money has been paid and the second choice, which he thinks is the more appropriate choice is to send it up to the Oversight Board and tell them if they want to come up with redevelopment dollars to pay for pursuing it against an entity that probably doesn't have the resources fine but otherwise let the Oversight Board make that decision.

Councilmember Peterson said a lot of these questions may have been asked previously but they have never been asked in the two years that he has been on the Council. He asked if the Banning Cultural Alliance is a California Corporation. City Attorney Aleshire said he thinks so but cannot say for a certainty. Councilmember Peterson asked if the officers could be held responsible for debt to the corporation or the entity. City Attorney Aleshire said he didn't know.

Mayor Franklin opened the item for Council discussion.

Councilmember Welch said this thing has been around the barn about ten times and we come back with the same questions whether we are in closed or open session about this item and it has

been going on for a long, long time. He really doesn't know what to ask anymore. We have had an audit that was based upon the Grand Jury findings. We have had a response to the audit and we are still where we are before we had the audit. Inability to pay, are the officers responsible he doesn't know and he thinks they need to find out. They do not have the assets to respond to this. Is it going back to the Oversight Board which is one recommendation that has some merit to it to allow somebody else to look into this but the second thing is that if we do pursue it and let's say it was a bad deal from the very start, if we do pursue this debt, it is going to be costly to the City to do it and should we collect it, the collection is not ours; it goes to the State. The City does not get a nickel of this. He knows that there is ethics involved here and we want to pursue the truth and make it right but at what price.

Councilmember Miller said he has a different viewpoint than the other Councilmember in that first of all he thinks the Cultural Alliance is a very nice organization and it brings a lot of cultural events to our city and he thinks our city enjoys and continues to enjoy the Cultural Alliance. The fact that the Cultural Alliance is a nice organization is unrelated to the fact that the City has its own obligation and it has an obligation to make sure that whatever taxpayer money that we give to anyone is fully accounted for. He is not talking about the past. As far as he is concerned when he looks at this audit it indicates two groups that are responsible for the problem and one is the Cultural Alliance not having, in his opinion, sufficient records and the other one is that the Council did not pursue its obligation to actively investigate and make sure that the money that was spent was spent correctly. And what he is really interested in is to make sure that in the future the Council before it gives money to any organization it verifies that that organization is competent to handle the money, it is competent to have all the records that are required and that it is competent to satisfy the requirements of the Council. He thinks that part of the problem is that everybody knows everybody and there is an old adage that says don't do business with your friends and relatives and he thinks that was one of the problems in this case. In the future it is of utmost importance that the Council pursues everything in a very businesslike fashion. In regards to this particular case, he thinks it is useless to pursue it particularly. He thinks it is our legal obligation to simply hand it off to the Successor Agency and he thinks the Oversight Board maintains people on the Cultural Alliance so we know where that will go; big deal. We have done our duty by passing that to them.

City Attorney said in regards to going after the officers personally that for a corporation your officers are not liable for the debts of the corporation unless there are very unusual circumstances. He said he is not an expert in corporation law but he thinks it is unlikely under these circumstances that there would be personal liability.

Councilmember Westholder said he agrees with Councilmember Miller. He said his biggest concern is that these are public funds and they were given in a public trust and they are not accounted for and he has problem with that and the reality of it is that we need to recognize as a City Council that we are here to take care of the public and we are to take care of the public funds and take care of the citizens and as nice as the Cultural Alliance is the fact of the matter is that we have a more important obligation and that is to take care of its citizens. If we have money to give to the Cultural Alliance, we have money to lower our utility rates and that it is the way he looks at it. He said the best thing we can do is to go with the City Attorney's recommendation and turn it over to the Successor Agency and we do have a fiduciary responsibility to make sure

that this money is accounted for and do everything that we possible can without allowing the City to go into more debt.

Councilmember Peterson said that this is a sad chapter that is going to come to a close and he thinks it is really sad that there are people right here in the community that sat as president on this charity that received a million dollars of taxpayer's money and squander it and have nothing to show for it and we come down and try to get an audit and papers are hidden, staff of the Cultural Alliance refuse to turn over papers and it makes you wonder how fare do you go. Do you try to make it a criminal investigation, where is it that you try to push. The City Attorney said that even if we recover money it is not going to be the City's money but it will be turned over to the Department of Finance. Who is going to pay the fees for the City Attorney to try to recover \$75,000 and if the Director of Cultural Alliance received that \$75,000 in salary and even if we tried to get it back, we are to a point where you just witnessed a million dollars of your money disappear and all there is left is \$75,000 to try to recover. When you sit and you think who allowed it well you have the Cultural Alliance and the staff there that took it and then you got a Council that didn't demand any accountability for it and when it really comes down to whose fault is it and he is almost going to have to put the fault on the people for not demanding more from your elected officials. He doesn't understand why we don't hold our elected officials and hold their hands to the fire and make them accountable for what it is that you voted them in office for. When he ran for office he said the Cultural Alliance is going to be on his agenda and he hasn't let go for two years. He has pushed, pushed and pushed this issue to get it to where it is at today and we are down to \$75,000 and that is all the people can get back from their million and it is not even worth going after and how sad is that. So here we are the end is over for the Banning Cultural Alliance and the million dollar debt. It will go on and he hopes the people are angry and it is really a travesty for what has happened in the City.

Mayor Franklin said that she was the only Council Member that voted against funding the Cultural Alliance. It is something that is in the past and unfortunately a lot of the comments that were made tonight were true that we don't have a lot to show for it but she thinks that the effort we need to make now is to move forward to look at anything they may do in the future that we have all of the right procedures and policies in place so that we don't have to have this kind of discussion again in the future.

Mayor Franklin said from what the Council has said we have consensus to move it towards the Oversight Board to have the final discussion and she asked the Council if there was any opposition to that; there was none. She asked the City Attorney if a formal vote was needed.

City Attorney said a vote would be useful and you are actually, right now, meeting as the Successor Agency so it goes from the Successor Agency which you are now to the Oversight Board.

Motion Westholder/Welch to turn this over to the Oversight Board.

The public was asking about public comments. Mayor Franklin said that it was a report of officers and was not a public comment item.

City Clerk said that the Banning Cultural Alliance brought in a letter today at 11:35 a.m. which is a response that was sent over to the City Attorney's office dated September 15, 2014 and they wanted the letter to be made a part of the record and copies were distributed to the City Council, City Attorney, and staff and was included in the public agenda folders for viewing by the public.

City Attorney said for clarity you are referring it to the Oversight Board and the recommendation includes that if the Oversight Board wants to pursue it, then you would want funding through the ROPS (Recognized Obligation Payment Schedule). Mayor Franklin said that was correct. Motion carried, all in favor.

Mayor Franklin adjourned the joint meeting and reconvened the regular City Council Meeting. She said a question has come up as to whether or not people actually make public comment on items that are not a part of public comment items and we have done that in the past but she has been advised by others that she has talked to that that is not actually the proper procedure and that you do have public comment on those items that are actually listed for public comment.

City Attorney Aleshire said he is not sure where this came from. Mayor Franklin said she talked to some people at the League of California Cities about it that it was optional but it was not necessarily something we were supposed to be doing.

City Attorney Aleshire said it is a process of City procedure and yes it could be different ways and you can have public comment at the beginning and not allow comment on individual items. You can have comment at the beginning and only have comments on public hearing items. And you can have comment at the beginning and have comment on individual items. As a matter of fact, you can have public comment at the beginning where you cannot comment on any item on the agenda and only comment on the agenda items later. If you are going to change the process, that is something we could indicate to everybody in advance as to what the process would be. But the Council can certainly allow comment on items if that is what you wish to do or you could only allow comment at the beginning of the meeting and then not allow comment on items.

There was Council and staff discussion regarding public comment on items and local rules.

Mayor Franklin reconvened the joint meeting and opened the last item regarding the Cultural Alliance for public comment.

The following people spoke in favor or against or had some questions or concerns or general comments in regards to this item *(any written comments handed to the City Clerk will be attached as an exhibit to the minutes)*:

- Diane Box said if the Cultural Alliance is still in business that is a problem for her and if the Banning Cultural Alliance officers are on the Oversight Board she also has a problem with that because it is not going to go anywhere.
- Jim Price said if we are owed a million dollars and if we collect, why doesn't it go back into the City coffers instead of going to the State.
- David Ellis said that you all just explained the perfect crime; one million stolen from the City of Banning. He said the Cultural Alliance was founded in 2005, the original president

is Charlene Sakurai, and the original vice-president was Bob Botts. City funding began immediately after 2006 when Bob Botts got on the Council. How many non-profits do you know that get hundreds of thousands of dollars in taxpayer's money within one year of inception. We have nothing to show for it. We don't need art, we need business and we need jobs. How disappointing our previous Council was with our money. He is glad we have some Councilmembers that are showing some accountability for our taxpayer's money. He hopes this is a lesson that we can move forward.

- Val Westholder said if we are going to look at the future, she would say that this Banning Cultural Alliance be dissolved or at the very least restructured and that the people who sat on it as the heads of the board be unfit to ever sit on a committee in the state of California again.
- Marion Johnson said she went through the process of allowing the Cultural Alliance to get started on their affair and as she said before we needed five people on the Council who can work together, put their minds together when we have a difficult problem coming and the only criteria you should have is how to protect the city of Banning and not a personal agenda.
- Marilyn Miller said that if we let the Cultural Alliance get away with his, every other Alliance is going to do the same thing.
- Charlene Sakurai said she was the first president of the Alliance and it was a brand new organization and Bob Botts was not even on the Board at that time. The whole first year was just a transition period but you have to remember that these are all volunteers giving all of their time and at that time they had no money and they all put their own money in to the post for something to work from and whether they got it back was not even an issue. With the whole evolution of everything that has gone on she would say that she agrees 500% with Ed Miller. She thinks that accountability is an essential component of any agreement between any people and that really needs to be done. She has not been on the board for years and she has no clue what happened to the paperwork but she does agree that this needs to be taken to whatever its final step is and that seems to be the most reasonable for the Oversight Board to make a decision. Perhaps some of them or one of them, she doesn't know, is on the Oversight Board because of specific expertise but she would hope that they would recuse themselves just as you have to recuse yourself. That would just make sense.

Mayor Franklin seeing no one else coming forward closed the item for public comment.

City Attorney responded to some of the comments. In regards to the issue of whether there is a Banning Cultural Alliance member on the Oversight Board and how it will play out as what was just said the Oversight Board has some appointees that came from the County, some from the City and Councilmember Welch is a representative on the Board so there was a City representative and it so happens that there is a community leader who was involved with the Cultural Alliance who is on the Board and so what will happen as with other public agencies if a matter comes to the Board in which they have an interest, they just step aside just like we saw tonight we had Councilmembers step aside when a matter came in which they had an interest. There is only one person on the Board and the Board is a large Board and he is sure he would step aside if that came to the Board. He thinks the Oversight Board will perform appropriately. A gentleman said if you had a million dollars and you recovered it, why would you have to give the money to the State and everyone on

the Council knows the answer to that. The redevelopment agency was dissolved. The State eliminated redevelopment and basically said that any redevelopment monies that the local communities have which are local taxpayer dollars those monies are going to go to other tax paying agencies school districts, etc. so basically took those dollars away from municipalities and directed the money elsewhere. Another thing that they said that if there are debts and obligations that you recover, that money goes the same way so they actually took money that we had in the bank and it left our coffers and went somewhere else which is one of the reasons that we face the financial conditions that we do. Comments about the Cultural Alliance being dissolved the Banning Cultural Alliance was not created by the City, it is not a City entity and the City has no control over it so we have no ability to make them dissolve the entity. We do have the ability to decide who we do business with and we are not doing business with the Banning Cultural Alliance at this point in time. In regards to the comments made by Mr. Ellis about money being stolen that was maybe hyperbolae that he is sometimes known to use. If money was actually stolen, we would go to the DA and do something about it. There were contracts and again, all this whole audit showed that there was only \$72,000 that they could not document and it was spent as it was supposed to and it was not a million dollars and the decision tonight was that the cost of trying to get back \$72,000 from an entity that doesn't have \$72,000 is not worth it.

City Attorney Aleshire said this matter was reopened so if a Councilmember thought that spun any of that you wanted to reconsider your decision, you could and if you don't, then thinks the earlier decision stands.

Mayor Franklin asked the Council if there was any change; there was none.

Mayor Franklin adjourned the joint meeting and reconvened the regular City Council Meeting.

REPORTS OF OFFICERS

1. Measure J Update
(Staff Report – David Aleshire, City Attorney)

City Attorney Aleshire said it was interesting earlier this evening hearing the comments from citizens who live in the area and are affected by the Robertson's pit operations even residents who have lived there as long as 50 years. So they have an intimate, first-hand knowledge of the pit and how it operates and in fact, we are in the middle of enforcement actions with the pit and have received complaints over the past few years concerning dust and noise activity. They have inspected the pit and it has been determined that material has been illegally excavated in the sense that the pit has been operating beyond the mining boundaries. We have sent them correspondence concerning this activity so they have had quite an effort in the last few years to deal with the land use impacts of the mining pit. The item tonight is not really to go into that and again, it is reinforcing to hear all of that but the issue tonight is really focused on the mining tax measure. A number of comments were made tonight concerning the tax, the fact that Robertson's has spent evidently \$150,000.00 on this campaign and raised a number of issues and undoubtedly everyone can see that there is a huge difference between what a private entity can spend in terms of campaign materials and what a City can do. At one point in time there was discussion about whether there would be a citizens group formed that could solicit contributions

where citizens could put out more campaign oriented materials and he has certainly been involved in communities where there was a citizens group would do that however, even in Banning had we formed a citizens group he doesn't think we would have been able to compete with \$150,000.00. So their effort has been very limited and more focused at an educational campaign and the law does make a distinction for those people that think how can Robertson's put out this material and the City has such limited material in response. Since we are spending taxpayer dollars we can only spend it on educational public information. We cannot spend it on a campaign. We have sent around as part of our normal billing to minimize the expense we have sent some materials and really tonight he wanted to reinforce the materials that have been sent out which are this limited educational purpose. It is gratifying to know that some citizens really understand this because in comments tonight some truths were stated and we simply want to restate and make sure those truths are clear. At this time City Attorney Aleshire explained the tax and who it affects, the amount of the tax, what the Measure J money will be spent on, that it is a general tax, the financial needs of the City, the items included in the ballot, the educational materials put out by the City, the lawsuits by Robertson's, what the mining operation has done to change the landscape, and Robertson's arrangement with Corona.

City Attorney Aleshire said he appreciates the citizens who understand what the reality is and who have spoken in favor and support this measure. So all of the citizens of this community have an economic stake in making sure that this City stays competitive with other jurisdictions and if we can't look at unique business entities in this community and tax them appropriately, at the end it will all fall back on having to figure out ways of increasing taxes to the residents and that is a no win situation for the City so we've been trying to figure out other ways of dealing with the problems of the City.

There was much Council comment on the flyers put out by Robertson's to the general public in regards to comparing Banning to San Jacinto, that the City wastes money, Robertson's is doing an emotional attack, our own County Supervisor Marion Ashley going against our City along with the Record Gazette and the Press Enterprise.

Mayor Franklin opened the item for public comments.

The following people spoke in favor or against or had some questions or concerns or general comments in regards to this item (*any written comments handed to the City Clerk will be attached as an exhibit to the minutes*):

- Fred Sakurai asked what if Robertson's just locks the gates and goes somewhere else. Are we going to have a hole in the ground that is going to slowly fill with water if we get any additional water and will that water raise the water level to the point where all the sand and gravel will cause a liquid faction potential when we have a major or minor earthquake. If that pond of water becomes a lake, what is to prevent that from affecting all the people around there? Also, who puts up the money to rehabilitate that hole in the ground?
- David Ellis said he had a conversation with Marion Johnson the other day and what Fred Sakurai says is pretty good. Fill that pit up with water and put some bass in it and we can all go out there fishing. He wanted to let people know that this mine produces some of the best aggregate probably in California. Architects like a good, white, clear aggregate. He has had

discussions with other people and we don't have to worry if they abandon it, the mine has been abandoned before because there are a lot of other companies that are willing to come in and mine. Something he doesn't think the City Attorney has talked on is the reclamation plan and he doesn't know if that has been completed yet. He thinks that the scare tactics are working and he is glad to hear that it is not a double taxation. It is just like the bed tax basically. If you use the product, you are going to pay for it and if you don't use the product, you are not going to pay for it.

Mayor Franklin closed the item for public comment seeing no one else coming forward.

City Attorney Aleshire said in terms of what would happen if Robertson's leaves, there is actually to operate under the State mining law you have to post bonds to pay for the cost of reclaiming the pit. There is a considerable investment there. They could not leave the pit in any sort of condition that would be unsafe. It would have to be properly reclaimed in accordance with the reclamation plan. We are in the process of trying to work with them to get a new reclamation plan and correct the problems that exist out there but under California law if you are mining, since the 1976 law was adopted, you can't just walk away from your pit and leave it. There will be money to take care of it.

Mayor Franklin said that there is no action on this item it was just a status report.

ANNOUNCEMENTS/REPORTS *(Upcoming Events/Other Items if any)*

City Council

Councilmember Westholder –

- On November 10th, Marine Corp Birthday day before Veteran's Day, Highland Springs Fellowship in conjunction with Banning American Legion is hosting a free breakfast for all veterans. If you are a veteran, come down to their post at the American Legion and receive a free breakfast. If you bring your spouse or bring a friend, they are just asking for a donation.

Mayor Franklin –

- She just wanted to remind everyone that she has said that she is not perfect so sometimes she makes mistakes like everybody else and so she apologizes to the Council and the public and she will try to make sure that before she makes any changes in terms of the agenda, she will check with the City Manager to make sure everything is appropriate.
- Thank you to the Community Services Department and to everybody that worked on the Halloween Fest held last Saturday. There were hundreds of people in attendance and everybody loved it. There were games that little children could play and even her nephew who is in a wheelchair was able to play some of the games. So it was a really good event and what she heard from the public more than anything else was can we do more activities like this. Maybe we can work on something that is not too costly to be able to have more community events like this. To see that many people out having a good time was really good.
- She attended the Riverside County Transportation Commission yesterday and one of the items was a call for transit projects. There will an announcement going out for next month and there will be \$2.1 million dollars available for the next three years each annually. She just wanted to

share that there are grants out there and she has given a copy to staff so they will be able to see if this is a way for us to get money for our transit operation.

- We adopted an ordinance to be a Healthy City several months ago and it came up at their leadership meeting last week and we are looking at trying to do a regional program. From Calimesa to Cabazon they are trying to get one person from each City and she and Brenda Knight from Beaumont both agreed that they would work to try to get the other cities together. They will be working with Loma Linda University Medical Center to try to see if they can put forth a plan that will apply to all of the Pass Area to work on how we can be a healthier community. They are not looking at it really costing any money and will bring updates back to the Council as plans move forward but they wanted to at least get started because in our community we have over 45% childhood obesity and that is one of the highest in the state so they wanted to see how they could turn that around.

Councilmember Welch –

- Our next City Council meeting is going to be on Wednesday, November 12th with respect to Veteran's Day on the 11th.

City Committee Reports – None

Report by City Attorney – None

Report by City Manager – Interim City Manager reported:

- The Overlay Project on Ramsey is nearing conclusion, asphalt is down and there is some striping left to do and some cleanup areas. The Replier Park Parking Lot Project is almost concluded and there are a few outstanding issues but for the most part it is usable.
- He said he had a response from the Utility Department regarding the comment that was made on the rates of us being one of the top two and Director Mason as some basic information and it is not really for the Council to comment on and just for Council's edification.

Director Fred Mason said that there is a group called the California Municipal Rates Group (CMRG) and they basically are a group of municipal utilities that get together and review rates and look at comparisons and things that impact rates. What they do twice a year is to put out a report (which he displayed on the screen) that compares all of the utilities that provide information like the IOU (Investor Owned Utilities) like San Diego Gas and Electric, Edison and PG&E and also any municipal utilities that provides information as far as their rate structure and they do a comparison and he explained the report and said that we are the sixth highest in the state of California based on the 23 entities that are assessed. He explained further the stacking order and how we move on the report based on kilowatt usage.

Councilmember Westholder said he has several comments and bottom line it shows Banning at No. 6 and you have places like San Diego, Pasadena, Modesto, Southern California Edison way above 30,000 people in Banning and then you have places like Glendale, Alameda, Anaheim, Los Angeles, Redding lower than us. There is no reason a town of 30,000 people should be up in the upper tiers. Also the interesting thing about this is that our rates are higher than most of the rest of the state when they used to be one of the lowest in the state and he has a problem with that especially during a recession when people in our city who are on fixed incomes cannot afford to run

their air conditioning because they are either retired or they are on public assistance and there is no reason that a town our size should be charging that much.

City Attorney Aleshire said that this is not on the agenda for discussion and he understands the reaction. Fred Mason was just trying to correct the record in terms of that information and if the Council wishes to get into a real discussion of the issue, it would be good to schedule it for a future agenda.

Mayor Franklin said she thinks that we want to have it come back as a topic for discussion in the future.

Director Mason said he actually had additional information to present that would actually address comments made by Councilmember Westholder so he asked if he should continue.

Mayor Franklin asked if it was appropriate to have more discussion on it at this time.

City Attorney Aleshire said probably if Fred Mason presents more information, there is going to be more questions and dialogue. He put this out here and we are obviously not the highest in the state but it is subject to discussion from that and he thinks it is best to put it on another time for discussion. It sounds like the Council would like to have a thorough discussion of the issue.

City Manager said that this will be brought back to Council after the first of the year because there are several jurisdictions that have applied for increases so it will change what you are looking at in this model and this is the thing that Fred Mason didn't get to conclude with you. It will brought back to the Council after these rate increases with the State and these jurisdictions have been approved by the PUC and then it would be a better discussion for the Council to see the truer picture.

ITEMS FOR FUTURE AGENDAS

New Items

Councilmember Peterson said he has two items both pertaining to electric. He would like to have two staff reports with one on the issue that was raised on this 33-day billing cycle. He would like to know if we are doing that or are we not doing it and if we are doing it, what is the purpose for doing it. The second report he would like is in regards to what process does the City use to collect unpaid utility bills. Because he is sure that we have some delinquent bills out there that are not being collected that is money on the books and he would like to see what it is. Then he would like to know how much money we are carrying in uncollected bills on our books; what is it that we have and what do we do with the uncollected utility bills. He would like to know how much money we have on the books that we cannot collect and who are we using, if anybody, to collect it or are we just sending notices and it is just being ignored or do we have an actual collection agency attempting to collect this money.

Councilmember Miller said he would like an item to verify what our City laws are in regards to public comment and to make sure that public comment is permitted on every item.

Councilmember Westholder said in regards to the staff report on electric rates he would like to compare apples to apples as far as size of cities, what they are using, how much electricity they are using. Also he would also like to compare apples to apples as far as annual income of the residents, annual consumption of the residents compared to other cities our size and thinks that is a little bit more accurate and will give us a better picture.

Mayor Franklin said that we have a lot of vacant properties around town and it seems like there is something going around that people are just putting trash out everywhere. So she would like to know if there is something we can do in terms of moving forward with how to make sure people are doing a better job with code enforcement and taking care of vacant properties. She knows that it has come up before but it seems like it has gotten out of hand very recently and it is all over the city.

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials *(Jan. 2015)*
2. Discussion on how to handle loans or distributions to charities. *(Midyear budget)*
3. Discussion on how the City Council handles donations to the City. *(Feb. 2015)*
4. Grocery Cart Policy *(In planning process.)*
5. Workshop to discuss the future of the airport. *(Nov. 2014)*
6. Discussion regarding Public Works Committee and Ad Hoc Committees *(Jan. 2015)*
7. Discussion regarding City's ordinance dealing with sex offenders and child offenders. *(Feb. 2015)*
8. Discussion to move "Announcements" (events) up on the agenda after Public Comments. *(Nov. 2014)*
9. Discussion regarding the discretionary limit of \$25,000 & review of all contracts by City Attorney. *(Oct. 28, 2014)*
10. Discussion regarding flex scheduling to keep city hall open five days a week.
11. Discussion regarding Animal Control Services *(Midyear Budget)*
12. Discussion regarding Police Staffing *(Midyear Budget)*
13. Prepare a staff report regarding delinquent utility fees owed by the Banning Chamber of Commerce. *(Nov. 2014)*
14. Golf Cart Lanes
15. Bond Workshop *(Midyear Budget)*

ADJOURNMENT

By common consent the meeting adjourned at 7:40 p.m.

Marie A. Calderon, City Clerk

THE ACTION MINUTES REFLECT ACTIONS TAKEN BY THE CITY COUNCIL. A COPY OF THE MEETING IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING TO THE CITY CLERK'S OFFICE.

**CITY COUNCIL AGENDA
CONSENT ITEMS**

Date: November 12, 2014

TO: Honorable Mayor and City Council

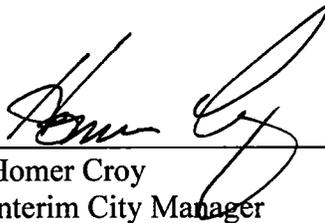
FROM: Homer Croy, Interim City Manager

SUBJECT: Approve Resolution No. 2014-80 Affirming Support of Local and Regional Military Installations in the County of Riverside

RECOMMENDATION: That City Council approve Resolution No. 2014-80, thereby affirming the Council's formal position in support of our Local and Regional Military Installations in the County of Riverside.

JUSTIFICATION: On May 27, 2014, City Council voted to consider a formal position in support of our local and regional military installations in the County of Riverside and approved the letter of support to be signed by Mayor Debbie Franklin. However, the Office of Military & Defense Services is hereby requesting that the letter be converted into an official Resolution format instead. Therefore, staff has complied with this request and recommends that the City Council approve Resolution No. 2014-80 affirming support of local and regional military installations in the County of Riverside.

RECOMMENDED BY:



Homer Croy
Interim City Manager

REVIEWED BY:

June Overholt
Administrative Services Director/
Deputy City Manager

CONSENT ITEMS

Mayor Franklin asked if there were any items to be pulled. Councilmember Miller pulled Consent Item No. 5 strictly for information purposes.

1. Approval of Minutes – Special Meeting – 05/13/14 (*Closed Session*)

Recommendation: That the minutes of the Special Meeting of May 13, 2014 be approved.

2. Approval of Minutes – Regular Meeting – 05/13/14

Recommendation: That the minutes of the Regular Meeting of May 13, 2014 be approved.

3. Report of Investments for April 2014

Recommendation: That the City Council receive and file the monthly Report of Investments.

4. Approval of Accounts Payable and Payroll Warrants for Month of April 2014.

Recommendation: That the City Council review and ratify the following reports per the California Government Code.

- ★ 6. City Council to consider a formal position in support of our Local and Regional Military Installations in the County of Riverside.

Recommendation: That the City Council consider a formal position in support of our local and regional military installations in the County of Riverside and approve the attached support letter to be signed by Mayor Franklin.

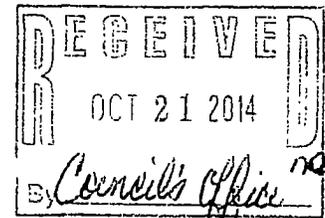
7. Resolution No. 2014-38, Approving the Purchase Agreement between Pristine Builders, Inc. and the City of Banning for the Property located at 215 E. Barbour Street, Banning, California.

Recommendation: The City Council adopt Resolution No. 2014-48, approving the Purchase Agreement between Pristine Builders, Inc. and the City of Banning for the property located at 215 E. Barbour Street, Banning, California, in the amount not to exceed \$75,000 plus \$2,000 paid towards Seller's Closing Costs, as attached in Exhibit "A".

Mayor Franklin opened the item for public comments. Seeing no one come forward she closed the item for public comment.

- ★ **Motion Peterson/Welch that the City Council approve Consent Items 1 through 4, 6 and 7. Motion carried, all in favor.**

5. Sole Source Purchase from Kustom Signals, Inc. to Purchase Nine (9) Digital Eyewitness G3 Vision Patrol Car Camera Systems in the Amount of \$48,848.04.



**Office of Military & Defense Services
County of Riverside, California**

October 9, 2014

Re: Resolution of Support for March Air Reserve Base & Naval Surface Warfare Center Corona

Dear Friend,

Previously this year, I respectfully requested that each of the cities in Riverside County consider a resolution which expressed support for March Air Reserve Base and the Naval Surface Warfare Center Corona. As of October 9, 2014, ten of the twenty-eight cities in Riverside County have responded to this request.

I realize how busy it can be serving in your capacity, and I thank you for all that you do for this community. I am respectfully requesting that your office, if it has not done so already, develop a resolution of support for our military personnel serving at our two local military installations. I have enclosed as an attachment a copy of a sample resolution that you may use to develop your own documents, if you would like.

Please understand that our military installations at March Air Reserve Base and the Naval Surface Warfare Center contribute greatly to our national defense and response to local disasters and create thousands of direct jobs in our twenty-eight cities. With 950 defense contractors in our county, the industry has received \$5 billion in contracts from the Department of Defense over the last decade.

Thank you in advance for your consideration of my request. I look forward to answering any questions you may have, and please feel free to contact me at TomFreeman@rivcoeda.org or at 951.955.9672.

Very Respectfully,

Thomas L. Freeman, Commissioner
Office of Military & Defense Services-EDA

Attachment: Sample Resolution of Support for Military Bases

**Board of
Supervisors**

KEVIN JEFFRIES
DISTRICT 1

JOHN TAVAGLIONE
DISTRICT 2

JEFF STONE
DISTRICT 3

JOHN J. BENOTT
DISTRICT 4

MARION ASHLEY
DISTRICT 5

Executive Team

JAY E. ORR
CEO

GEORGE A. JOHNSON
CHIEF ASSISTANT CEO

ROB FIELD
ASSISTANT CEO

JEFF VAN WAGENEN
MANAGING DIRECTOR



Home (951) 955-9672
Fax (951) 955-9177
www.rivcoeda.org

3403 Tenth Street, Suite 300
Riverside, CA, USA, 92501

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NOW WHEREAS, the United States Navy's Naval Surface Warfare Center, Corona Division and March Air Reserve Base are located in the County of Riverside, California; and

NOW WHEREAS, the United States Navy's Naval Surface Warfare Center, Corona Division is a major employer in the Southern California Region and a major contributor to the region's economy; and

NOW WHEREAS, March Air Reserve Base is a major employer in the Southern California region and a major contributor to the region's economy; and

NOW WHEREAS, combined, these two military installations located in Riverside County, California generate an annual pay roll approaching \$1 billion dollars for local workers in the civilian and military workforces at both bases; and

NOW WHEREAS, Defense Department contracts in Riverside County and its twenty-eight cities combined for \$5 billion in direct payment from the federal govern to nine hundred small business owners, which in turn creates thousands of direct and indirect jobs in our region; and

NOW WHEREAS, the Honorable Secretary of Defense of the United States of America has repeatedly recommended the Senate and Congress authorize the closing of military bases domestically and abroad; and

NOW WHEREAS, the Honorable Secretary of Defense of the United States of America has specifically requested that another Base Realignment and Closure Commission be authorized in the near future to close military bases across the nation and around the globe; and

NOW WHEREAS, March Air Reserve Base and Naval Surface Warfare Center, Corona Division are assets to the United States Armed Forces and both installations provide unique missions in support of our national security and disaster response that make the bases ideal to be used as national models for military and defense missions; and

NOW WHEREAS, both installations have been reviewed by prior Base Realignment and Closure Commissions resulting in March Air Force Base being reduced to a Reserve Installation and Naval Surface Warfare Center, Corona Division also being impacted adversely; and

NOW WHEREAS, Base Realignment and Closure results for Riverside County and its twenty-eight cities adversely impacted the economy and the regional economy has not completely added jobs lost at March Air Reserve Base or the Naval Surface Warfare Center, Corona Division; and

NOW WHEREAS, the reuse of lands outside the cantonment area of March Air Reserve Base has not progressed for a variety of reasons related to the Great Recession and lack of capitol availability for financing; and

NOW, WHEREAS, LET IT BE RESOLVED, the California State Assembly supports the County of Riverside Board of Supervisors and its Office of Military and Defense Services in opposition to another round of Base Realignment and Closure (BRAC) as it relates to the Naval Surface Warfare Center, Corona Division and March Air Reserve Base. We respect that our federal representatives in the Senate and the House also opposed any cuts, reductions, realignment or missions and resources assigned to these two installations. Furthermore, the California State Assembly is also opposed to the elimination or realignment of military and civilian jobs at the Naval Surface Warfare Center, Corona Division and March Air Reserve Base. These jobs and missions of the Military Department of the State of California, and the Active Duty and State and Federal Reserve forces are assets to the communities they serve and play a leading role in keeping our nation safe and secure.

RESOLUTION NO. 2014-80

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, IN SUPPORT FOR MARCH AIR RESERVE BASE AND THE NAVAL SURFACE WARFARE CENTER CORONA

WHEREAS, the United States Navy's Naval Surface Warfare Center, Corona Division and March Air Reserve Base are located in the County of Riverside, California; and

WHEREAS, the United States Navy's Naval Surface Warfare Center, Corona Division is a major employer in the Southern California Region and a major contributor to the region's economy; and

WHEREAS, March Air Reserve Base is a major employer in the Southern California region and a major contributor to the region's economy; and

WHEREAS, combined these two military installations located in Riverside County, California generate an annual pay roll approaching \$1 billion dollars for local workers in the civilian and military workforces at both bases; and

WHEREAS, Defense Department contracts in Riverside County and its twenty-eight cities combined for \$5 billion in direct payment from the federal government to nine hundred small business owners, which in turn create thousands of direct and indirect jobs in our region; and

WHEREAS, the Honorable Secretary of Defense of the United States of America has repeatedly recommended the Senate and Congress authorize the closing of military bases domestically and abroad; and

WHEREAS, the Honorable Secretary of Defense of the United States of America has specifically requested that another Base Realignment and Closure Commission be authorized in the near future to close military bases across the nation and around the globe; and

WHEREAS, March Air Reserve Base and Naval Surface Warfare Center, Corona Division are assets to the United States Armed Forces and both installations provide unique missions in support of our national security and disaster response that make the bases ideal to be used as national models for military and defense missions; and

WHEREAS, both installations have been reviewed by prior Base Realignment and Closure Commissions resulting in March Air Reserve Base being reduced to a Reserve Installation and Naval Surface Warfare Center, Corona Division also being impacted adversely; and

WHEREAS, Base Realignment and Closure results for Riverside County and its twenty-eight cities adversely impacted the economy and the regional economy has not completely added jobs lost at March Air Reserve Base or the Naval Surface Warfare Center, Corona Division; and

WHEREAS, the reuse of lands outside the cantonment area of March Air Reserve Base has not progressed for a variety of reasons related to the Great Recession and lack of capitol availability for financing.

NOW, THEREFORE, BE IT RESOLVED, that the City of Banning supports the County of Riverside Board of Supervisors and its Office of Military and Defense Services in opposition to another round of Base Realignment and Closure (BRAC) as it relates to the Naval Surface Warfare Center, Corona Division and March Air Reserve Base. We respect that our federal representatives in the Senate and the House also opposed any cuts, reductions, realignment or missions and resources assigned to these two installations.

FURTHERMORE, the City of Banning is also opposed to the elimination or realignment of military and civilian jobs at the Naval Surface Warfare Center, Corona Division and March Air Reserve Base. These jobs and missions of the Military Department of the State of California, and the Active Duty and State and Federal Reserve forces are assets to the communities they serve and play a leading role in keeping our nation safe and secure.

PASSED, APPROVED AND ADOPTED this 12th day of November, 2014.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie Calderon, City Clerk
City of Banning, California

**APPROVED AS TO FORM
AND LEGAL CONTENT:**

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2014-80, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of November, 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie Calderon, City Clerk
City of Banning, California

**CITY COUNCIL AGENDA
CONSENT**

DATE: May 27, 2014

TO: Honorable Mayor and City Council

FROM: Homer Croy, Interim City Manager

SUBJECT: City Council to consider a formal position in support of our Local and Regional Military Installations in the County of Riverside

RECOMMENDATION: That the City Council consider a formal position in support of our local and regional military installations in the County of Riverside and approve the attached support letter to be signed by Mayor Franklin.

JUSTIFICATION: The Council's support of the attached six positions will make a lasting impression on our United States Senators, Congressional delegates, the armed service, and the administration. It is imperative that Riverside County Cities join to support our military personnel, installations, and modernization and to oppose Base Realignment and Closure of the Naval Surface Warfare Center, Corona Division and March Air Reserve Base. Please refer to Attachments 1-6 for further details outlining each of the six positions.

BACKGROUND: Riverside County supervisors recently approved establishing an Office of Military and Defense Services (OMDS) to identify strategies for preserving the area's two remaining military installations and increasing federal contracting opportunities for local businesses. The new OMDS has been assigned as a branch of the County of Riverside Economic Development Agency.

The Defense Department Agency is responsible for activating cutbacks as the Federal Government moves forward with the complex and diminishing impact of cutting billions out of the nation's annual budget. The Defense Department is authorizing the nation's counties to help implement these reductions under the newly consolidated Office of Military and Defense Services, headed up by Commissioner Tom Freeman, which includes key military support facilities, as well as hundreds of businesses dependent on Defense Department activities, while providing a formidable total payroll.

Military contracts and contacts are vital to this county's economic interest and jobs. The Department of Defense records indicate around 900 county-based businesses received over \$5.1 billion in defense contracts over the last 12 years.

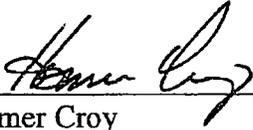
With innumerable installations affected by this governmental "belt-tightening" of the Defense Department, both in the U.S., and its installations all over the world, the U.S. Defense Department is wisely reaching out to the county levels within the fifty states to make the most judicious decisions, affecting America's far-reaching military defense system.

In projecting the impact on the American nation's continuing unemployment problems, the decisions made in Washington on cutting back existing systems, and projected future technological development, could derivatively affect the economic well-being throughout the country, when considering hundreds of thousands of civilians supporting military installations throughout the land.

3831

FISCAL DATA: N/A

RECOMMENDED BY:



Homer Croy
Interim City Manager

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

Attachments: 6

1. **Naval Surface Warfare Center**
2. **Air & Marines Operations Center**
3. **Joint Forces Deployment Center**
4. **Deployment of Boeing KC-46A Tanker**
5. **Support Naval Surface Warfare Center**
6. **Funding for Air National Guard F-15 Radar Upgrades**

DRAFT

May 27, 2014

Office of Military & Defense Services
County of Riverside, California
Economic Development Agency
Attn: Commissioner Tom Freeman
3403 Tenth Street, Suite 300
Riverside, CA 92501

Sent via regular mail & email
tomfreeman@rivcoeda.org

**RE: Support Local and Regional Military Installations, and Modernization
Oppose Base Realignment and Closure of the Naval Surface Warfare Center,
Corona Division and March Air Reserve Base**

Dear Commissioner Freeman,

On behalf of the City Council, City of Banning, please accept this letter in support of Riverside County's military personnel, installations, and modernization and to **oppose** Base Realignment and Closure of the Naval Surface Warfare Center, Corona Division and March Air Reserve Base.

At its' regular meeting held May 27, 2014, the City Council reviewed and approved your request dated April 22, 2014, attached hereto. The City Council hereby supports our local and regional military installations in the County of Riverside and of the six attached position papers, as follows:

1. Naval Surface Warfare Center – Sustain Technical Capability and Lower Operating Costs at Naval Surface Warfare Center, Corona Division
ACTION: The City Council urges Congress, administration officials, the Department of the Navy, and the Department of Defense to oppose any reduction in manning levels at NSWC Corona, other than called for by the cost-efficient Navy Working Capital Fund model.
2. Air & Marine Operations Center (AMOC) Phase B – Riverside, CA
ACTION: The City Council urges federal leaders to support the implementation of AMOC Phase B to expand the center's capabilities and provide more effective intelligence and awareness to national security partners.
3. Joint Forces Deployment Center Needed at March Air Reserve Base
ACTION: The City Council urges federal leaders to support the construction of a Joint Forces Deployment Center at March Air Reserve Base to meet the expanding troop, passenger, and cargo deployment needs of current military operations.

4. Deployment of Boeing KC-46A Tanker to March Air Reserve Base (MARB)
ACTION: The City Council urges federal elected leaders and public officials to support assignment of the Boeing KC-46A tanker to relevant units at MARB because it has the personnel capabilities, infrastructure and community support necessary.
5. Support the Mission of the Naval Surface Warfare Center (NSWC) – Corona Division
ACTION: The City Council urges Congress, administration officials, the Department of the Navy, and the Department of Defense to oppose any action to close, move, or realign NSWC Corona during any BRAC and budget negotiations.
6. Funding for Air National Guard F-15 Radar Upgrades to maintain the California Air National Guard's 144th Fighter Wing (radar upgrades in order to maintain its two missions at March Air Reserve Base and Fresno Airport).
ACTION: The City Council urges federal and military leaders to prioritize the request for 19 additional F-15 APG-63 (V)3 Active Electronically Scanned Array (AESA) radars for the California Air National Guard.

If you have any questions, or wish to discuss, please feel free to contact me directly at (951) 990-2721.

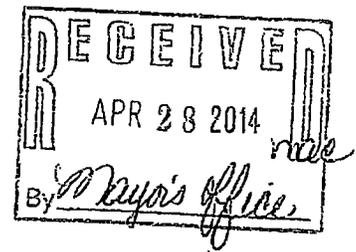
Respectfully,

DRAFT

Deborah Franklin
Mayor

Attachments: 6

1. Naval Surface Warfare Center
2. Air & Marines Operations Center
3. Joint Forces Deployment Center
4. Deployment of Boeing KC-46A Tanker
5. Support Naval Surface Warfare Center
6. Funding for Air National Guard F-15 Radar Upgrades



Office of Military & Defense Services
County of Riverside, California

Board of Supervisors

KEVIN JEFFRIES
DISTRICT 1

JOHN TAVAGLIONE
DISTRICT 2

JEFF STONE
DISTRICT 3

JOHN J. BENOIT
DISTRICT 4

MARION ASHLEY
DISTRICT 5

Executive Team

JAY E. ORR
CEO

GEORGE A. JOHNSON
CHIEF ASSISTANT CEO

ROB FIELD
ASSISTANT CEO

LISA BRANDL
MANAGING DIRECTOR

April 22, 2014

The Honorable Debbie Franklin
City of Banning
99 East Ramsey Street
Banning, CA 92220

Dear Mayor Franklin,

I am writing to respectfully request for your city to take a formal position in support of our local and regional military installations in the County of Riverside and of the six attached position papers. Our Office of Military & Defense Services was recently activated by the Board of Supervisors to support our military personnel, installations, and modernization and to oppose Base Realignment and Closure of the Naval Surface Warfare Center, Corona Division and March Air Reserve Base.

Your city and its council's support of these six positions, along with the support of the other twenty-seven cities in Riverside County, will make a lasting impression on our two United States Senators, our four Congressional delegates, the armed service, and the administration. Additionally, our military and civilian personnel assigned to our regional bases are always grateful to receive such support.

Thank you for your thoughtful consideration of this request. If you need additional information or wish to discuss this information, I am available through email at tomfreeman@rivcoeda.org or by telephone at 951.955.9672.

Very Respectfully,

Thomas L. Freeman, Commissioner
Office of Military & Defense Services

Attachments: 6

1. Naval Surface Warfare Center
2. Air & Marines Operations Center
3. Joint Forces Deployment Center
4. Deployment of Boeing KC-46A Tanker
5. Support Naval Surface Warfare Center
6. Funding for Air National Guard F-15 Radar Upgrades



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3403 Tenth Street, Suite 300
Riverside, CA, USA, 92501

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Office of Military & Defense Services County of Riverside, California

SUSTAIN TECHNICAL CAPABILITY AND LOWER OPERATING COSTS AT NAVAL SURFACE WARFARE CENTER, CORONA DIVISION

Board of Supervisors

KEVIN JEFFRIES
DISTRICT 1

JOHN TAVAGLIONE
DISTRICT 2

JEFF STONE
DISTRICT 3

JOHN J. BENOIT
DISTRICT 4

MARION ASHLEY
DISTRICT 5

Executive Team

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GEORGE A. JOHNSON
CHIEF ASSISTANT CEO

ROB FIELD
ASSISTANT CEO

LISA BRANDL
MANAGING DIRECTOR

ISSUE: Naval Surface Warfare Center, Corona Division should be exempt from any Department of Defense reductions in civilian personnel because it operates under the Navy Working Capital Fund business model, generating operating revenue by charging Navy, Marine Corps, and other military customers for needed science and engineering products and services. As such, it receives no appropriated funds and its manning levels are determined by customer demand for its services.

ACTION: The County urges Congress, administration officials, the Department of the Navy, and the Department of Defense to oppose any reduction in manning levels at NSWC Corona, other than called for by the cost-efficient Navy Working Capital Fund model.

BACKGROUND: NSWC Corona has been a leader in the Navy's research, development, test and evaluation process and has provided independent assessment for 50 years. The Secretary of the Navy established its unique mission in 1964 to provide objective, unbiased ground-truth during the development of the Navy's first guided missile systems. Today, the center serves as the Navy's only independent assessment agent and is responsible for gauging the warfighting capability of Navy ships and aircraft, supporting some 400 military projects.

Technical Capability:

- Even in a down-budget environment, defense technical capability must be maintained to strengthen our national security.
- As threats have increased to unprecedented levels, never before has the nation needed greater defense capability than now to keep pace with the speed and proliferation of technological advancement around the globe.
- Defense capability should not be outsourced to industry, which is under no obligation to manage its stewardship.
- It is imperative that the next generation of scientists and engineers be hired, trained, and developed before the large number of retirement-eligible civilians leave and the brain trust is lost.
- NSWC Corona's unique technical capability cannot be built overnight and the coming brain drain makes this an urgent need.

Lower Operating Costs:

- In the Working Capital Fund business model, commands generate overhead operating funds with military and civil servants working on military projects. Commands use these funds to maintain physical capital (infrastructure, laboratory facilities) and its intellectual capital (the workforce). Under this business model, overhead-operating capital is not generated when contractors perform the same exact work – only the exact expense may be charged to the customer.
- As in the private sector, commands largely have fixed operational costs for their infrastructure and the more they can spread those expenses across a larger government workforce, the lower their labor rate. So more military and Navy civilians working on direct military programs generate more overhead funds to support fixed operational costs, which lower the command's labor rate and reduce costs to programs and the taxpayer.
- NSWC Corona entered the sequestration era with a government-contractor imbalance and was over-reliant on support contractors to execute its mission. To improve technical health, NSWC Corona is expanding its technical workforce through targeted and judicious hiring.



Office of Military & Defense Services County of Riverside, California

AIR AND MARINE OPERATIONS CENTER PHASE B

Board of Supervisors

KEVIN JEFFRIES
DISTRICT 1

JOHN TAVAGLIONE
DISTRICT 2

JEFF STONE
DISTRICT 3

JOHN J. BENOIT
DISTRICT 4

MARION ASHLEY
DISTRICT 5

Executive Team

JAY E. ORR
CEO

GEORGE A. JOHNSON
CHIEF ASSISTANT CEO

ROB FIELD
ASSISTANT CEO

LISA BRANDL
MANAGING DIRECTOR

ISSUE: The Air and Marine Operations Center (AMOC,) a law enforcement multiple agency awareness center in Riverside, CA, that supports the Department of Homeland Security (DHS), needs modernization.

ACTION: The County urges federal leaders to support the implementation of AMOC Phase B to expand the center's capabilities and provide more effective intelligence and awareness to national security partners.

BACKGROUND: AMOC Phase B is an incremental, multi-phase program to modernize AMOC and enhance its capability to provide cross-domain awareness through the merging of air, ground, and maritime domain awareness as well as intelligence to maintain a continuum of border, airspace, land, and maritime safety and security. When fully implemented, the AMOC Phase B Program will provide:

- Expanded physical space to accommodate additional Office of Air and Marine and interagency personnel for critical, national-level mission-planning and coordination activities
- Additional connections with surveillance and sensor systems operated by DHS, other government agencies, state, local, tribal and international partners
- Improved connections with law enforcement databases and intelligence information and networks
- Improved dissemination of radar, video, and other data
- Enhancements to Air and Marine Operations Surveillance System to incorporate the new capabilities
- Backup systems and continuity of operations capability

Currently, several alternatives to implement AMOC's modernization are being analyzed. Once an alternative is selected for implementation, a cost estimate to implement Phase B will be projected.

Since its establishment in 1988, the role of the AMOC has expanded to meet additional national security requirements and support the priority mission of DHS. Agencies integrating the AMOC's capabilities into their operations include Immigration and Customs Enforcement, the Federal Emergency Management Agency, the U.S. Coast Guard, the U.S. Secret Service, and organizations external to DHS including the Federal Bureau of Investigations, the Bureau of Alcohol, Tobacco and Firearms, the U.S. Marshals Service, Federal Aviation Administration (FAA), the Department of Defense (DoD), and state, local, tribal and international law enforcement organizations. Over twenty-five of these organizations and agencies provide a continual link to AMOC via either virtual or on-site representation.

The AMOC provides a key element of the nation's air domain awareness. DHS shares air domain awareness responsibility with the DoD, FAA, DHS law enforcement databases, national intelligence, and other sources. Such domain awareness enables DHS to work with its components, state and local personnel, international partners, and DoD for interdiction of suspicious targets.

The AMOC employs the Air and Marine Operations Surveillance System (AMOSS) and extensive intelligence, detection, monitoring, and coordination capabilities to make threat determinations in the performance of critical counter-terrorism and counter-narcotics missions. Though it was constructed initially to track general aviation aircraft, the AMOC's capabilities are now growing in the maritime and land environments. The AMOC collects data on aircraft and maritime vessels, investigates intentions for these craft, and when warranted, coordinates interdiction of them.



Office of Military & Defense Services County of Riverside, California

JOINT FORCES DEPLOYMENT CENTER NEEDED AT MARCH AIR RESERVE BASE

ISSUE: March Air Reserve Base needs a modern deployment terminal facility to meet the growing cargo and personnel demand being transported to and from the base.

ACTION: The County urges federal leaders to support the construction of a Joint Forces Deployment Center at March Air Reserve Base to meet the expanding troop, passenger, and cargo deployment needs of current military operations.

BACKGROUND: The current deployment terminal facility at March Air Reserve Base will continue to be unsuitable for the number of military personnel being processed for deployments. Frequently deploying troops from the 1st Marine Expeditionary Force, 452nd Air Mobility Wing, Army Reserves, and Federal and State entities for national interests are corralled outdoors for extended periods of time and inefficient conditions result in degraded capabilities and lengthy processing times.

Furthermore, lack of adequate co-located cargo processing will continue to impede deployment. The base will continue to be at risk of environmental and safety issues regarding personnel, cargo, and airframes. Frequently deploying troops from the 1st Marine Expeditionary Force, 452nd Air Mobility Wing, Army Reserves, and Federal and State entities for national interests are processing cargo outdoors for extended periods of time and inefficient conditions result in degraded capabilities and lengthy processing times.

The existing passenger terminal Building 265 was constructed in 1942 and has exceeded its life cycle. The facility has degraded infrastructure and utilities being used to support personnel. The communications systems also need to be updated to support the volume of personnel.

The second facility being used for this process is Hangar 385. This is a historical facility built in 1929 and is adjacent to the passenger terminal. This facility is used for the overflow of military personnel until embarkation. Building 385 is capable of only providing minimal accommodations and has significant deficiencies (plumbing, electrical, HVAC) prevent this facility from meeting mission requirements. Current facility provides no separate space for counseling, interviews, legal reviews, chaplain services, or food/comfort services.

Cargo processing is also being done at multiple locations. Vehicles are washed, drained of oil and fuels, and then transported to the mass parking ramp weigh scale. This is highly inefficient and dangerous for personnel. There are no pits or catwalks, and is a risk to the installation for hazardous material spills while processing vehicles. Cargo loading can/is impeded by weather exposure and insect infestation delaying aircraft loading and schedules.

Board of Supervisors

KEVIN JEFFRIES
DISTRICT 1

JOHN TAVAGLIONE
DISTRICT 2

JEFF STONE
DISTRICT 3

JOHN J. BENOIT
DISTRICT 4

MARION ASHLEY
DISTRICT 5

Executive Team

JAY E. ORR
CEO

GEORGE A. JOHNSON
CHIEF ASSISTANT CEO

ROB FIELD
ASSISTANT CEO

LISA BRANDL
MANAGING DIRECTOR



Office of Military & Defense Services County of Riverside, California

DEPLOYMENT OF THE BOEING KC-46A TANKER TO MARCH AIR RESERVE BASE

Board of Supervisors

KEVIN JEFFRIES
DISTRICT 1

JOHN TAVAGLIONE
DISTRICT 2

JEFF STONE
DISTRICT 3

JOHN J. BENOIT
DISTRICT 4

MARION ASHLEY
DISTRICT 5

Executive Team

JAY E. ORR
CEO

GEORGE A. JOHNSON
CHIEF ASSISTANT CEO

ROB FIELD
ASSISTANT CEO

LISA BRANDL
MANAGING DIRECTOR

ISSUE: The March Air Reserve Base (MARB) has not yet been assigned the Boeing KC-46A tanker, a wide-body, versatile aircraft that will revolutionize the capability of air mobility missions in the United States armed forces.

ACTION: The County urges federal elected leaders and public officials to support assignment of the Boeing KC-46A tanker to relevant units at MARB because it has the personnel capabilities, infrastructure and community support necessary.

BACKGROUND: The Boeing KC-46A can refuel all US, allied and coalition military aircraft compatible with international aerial refueling procedures, any time, on any mission, and can carry more passengers, cargo and patients whenever and wherever needed. The ability to detect, avoid, defeat and survive threats using robust defensive systems and cockpit armor protection will allow the KC-46A to operate safely in medium-threat environments. With unmatched operation flexibility, the KC-46A is a mobility game changer. It was developed by Boeing from its 767 jet airliner. In February 2011, the tanker was selected by the United States Air Force to replace older KC-135 Stratotankers. Boeing is under contract to deliver 18 initial operational KC-46A tankers by 2017. The Air Force is seeking a total of 179 new tankers to replace 179 KC-135s.

Air Reserve bases were not considered for the initial round of assignments of the KC-46A, which focused on active duty and Air National Guard assignments. However, they will be considered for two of the future main operating bases, although the timeframe for that decision is as yet unclear.

The priority assignment of the KC-46A tanker to active duty and Air National Guard installations seems practical in that the vast majority of KC-135 aircraft and bases are held by those units. However, March is a joint base sustaining all three components: active duty, Air National Guard, and Air Reserve. Current active duty and Air Reserve units at March operate KC-135 Stratotanker and C-17 Globemaster missions. While the 163rd Air Reconnaissance Wing of the Air National Guard currently has an unmanned predator mission; the unit previously had a KC-135 mission. These three branches together provide the air refueling capabilities needed to meet Air Force criteria. In addition, March, as a former Strategic Air Command base, boasts adequate infrastructure to host the new KC-46A tankers.

March also enjoys community support not only for its mission but also for local troops and their families. To protect the mission at March, the governing bodies of the County of Riverside, the cities of Riverside, Moreno Valley, and Perris as well as the March Joint Powers Authority collectively sought and obtained a grant from the United States Department of Defense, Office of Economic Adjustment to prepare the MARB/JPA Joint Land Use Study.

The resulting airport compatibility plan incorporates the guidelines contained in the existing March Air Installation Compatibility Use Zone Study and expands upon them by: 1) providing more definitive standards for new development; 2) implementing a significantly larger buffer area to transition from un-impacted outlying areas to the airport's Accident Potential Zones; and 3) requiring airport disclosure in property transactions for vast areas within the airport influence area.



Office of Military & Defense Services County of Riverside, California

SUPPORT THE MISSION OF NAVAL SURFACE WARFARE CENTER, CORONA DIVISION

Board of Supervisors

KEVIN JEFFRIES
DISTRICT 1

JOHN TAVAGLIONE
DISTRICT 2

JEFF STONE
DISTRICT 3

JOHN J. BENOIT
DISTRICT 4

MARION ASHLEY
DISTRICT 5

Executive Team

JAY E. ORR
CEO

GEORGE A. JOHNSON
CHIEF ASSISTANT CEO

ROB FIELD
ASSISTANT CEO

LISA BRANDL
MANAGING DIRECTOR

ISSUE: Naval Surface Warfare Center, Corona Division (NSWC Corona) needs to remain at its location at Naval Weapons Station Seal Beach Detachment Norco to fulfill its important mission as the Navy's independent assessment agent, the Navy and Marine Corps range systems engineering agent, and the Navy and Marine Corps measurement science and calibration agent.

ACTION: The County urges Congress, administration officials, the Department of the Navy, and the Department of Defense to oppose any action to close, move, or realign NSWC Corona during any BRAC and budget negotiations.

BACKGROUND: NSWC Corona receives no appropriated funds and provides its own operating funds under the Navy Working Capital Fund business model by charging Navy, Marine Corps, and other military customers for its science and engineering products and services. The warfare center has the manning capabilities, infrastructure and community support necessary to execute its mission from its Norco, California headquarters.

It has been a leader in the Navy's research, development, test and evaluation process and has provided independent assessment for 50 years. The Secretary of the Navy established its unique mission in 1964 to provide unbiased information during the development of the Navy's first guided missile systems. Today, the center serves as the Navy's only independent assessment agent and is responsible for gauging the warfighting capability of Navy ships and aircraft, supporting some 400 military projects.

It also provides critical warfighter support as the range systems engineering agent for the Navy and Marine Corps, helping sustain surface fleet and aircrew training and pre-deployment certification around the world. Its systems are designed, engineered and tested in Norco and are located at nearly 100 Navy, Marine Corps, Air Force and Air National Guard and allied nation ranges around the world.

The warfare center also serves as the measurement and calibration agent to ensure the measurement accuracy of today's precision combat and weapon systems. It's patented, award-winning automated calibration management system is projected to save the Navy \$65 million by 2017. It is the subject of the Navy's first cross-license patent licensing agreement that will transfer this innovative system to the commercial sector, offsetting initial Navy costs and allowing subsequent improvements to return to the Navy at no additional expense.

In the heart of Southern California's Inland Empire, NSWC Corona is strategically located near the Navy and Coast Guard fleet in San Diego, the Marines at Camp Pendleton and 29 Palms, the Air Force in Riverside, and the Army at Ft. Irwin, all within hours of its Norco location.

With nearly 75 percent of its Navy civilians working as scientists and engineers, the warfare center maintains its technical edge by working closely with area colleges and universities, which provide a critical pipeline for science and engineering graduates and help sustain its technical capability.

NSWC Corona also enjoys community support not only for its mission but also for the valuable economic, intellectual and social contribution it makes to Southern California. As a high-tech center for science and engineering, the base contributes more than \$300 million each year to the regional economy, with some 1,500 local civilians and contractors supporting nearly 200 Defense Department programs. The base hosts more than 7,000 visitors each year, and generates some 18,000 room nights.

6



Office of Military & Defense Services County of Riverside, California

FUNDING FOR AIR NATIONAL GUARD F-15 RADAR UPGRADES

Board of Supervisors

KEVIN JEFFRIES
DISTRICT 1

JOHN TAVAGLIONE
DISTRICT 2

JEFF STONE
DISTRICT 3

JOHN J. BENOIT
DISTRICT 4

MARION ASHLEY
DISTRICT 5

Executive Team

JAY E. ORR
CEO

GEORGE A. JOHNSON
CHIEF ASSISTANT CEO

ROB FIELD
ASSISTANT CEO

LISA BRANDL
MANAGING DIRECTOR

ISSUE: The California Air National Guard's 144th Fighter Wing need the necessary radar upgrades in order to maintain its two missions at March Air Reserve Base and Fresno Airport.

ACTION: The County urges federal and military leaders to prioritize the request for 19 additional F-15 APG-63 (V)3 Active Electronically Scanned Array (AESA) radars for the California Air National Guard.

BACKGROUND: The cancellation of the F-22 has meant greater reliance by the United States Air Force on other strike fighters, including its F-15 fleet. Unfortunately, the Air Force has reduced the number of F-15 Primary Aircraft Allowance from 18 to 15 at each F-15 wing. This will mean it will be impossible for the California Air National Guard's 144th Fighter Wing to maintain both of its two 24/7 operational alert missions at March Air Reserve Base and Fresno Airport. These missions are critical to the national/homeland security of America's western flank.

To ensure the F-15's capabilities match today's standards, the Air Force is currently upgrading its radar system. As stated in the President's Budget, "The (V)3 AESA upgrade significantly improves Reliability, Maintainability & Supportability (RM&S), and substantially improves operational effectiveness and combat lethality of the existing APG-63 equipped aircraft." The budget includes funding for 24 radar upgrades, yet several dozen F-15s will still require upgrading. The request funds 19 radar upgrades for this year to ensure the F-15 fleet can be used for many years in the future. The remaining will be upgraded in subsequent years.

It is a vital national interest to maintain Air National Guard F-15C/D aircraft to the highest possible combat capability. Moreover, the APG-63 (V)3 AESA radar is drastically easier and cheaper to maintain, and is required to maintain a tactical advantage over current and projected adversaries. Funding for 19 additional (V)3 AESA radars will sustain the Air National Guard's autonomous execution of its Aerospace Control Alert mission and Designed Operational Tasking, in support of worldwide operations.

41 JFB

Marie Calderon

From: Daniele Savard
Sent: Wednesday, May 21, 2014 12:33 PM
To: Homer Croy; Marie Calderon; June Overholt
Subject: Emailing: 2014.05.27.Draft Letter of Support - Military Installations, etc.
Attachments: Letter from OMDS - outlining six positions seeking support.pdf; 2014.05.27.Letter of Support.doc; 2014.05.27.Staff Report - Office of Military and Defense - 6 items to take a position on.doc

Attached please find the draft letter of support for next Tuesday's meeting.

For reference, I have also attached the staff report and related attachments.

June: We made only a minor change to the staff report to more clearly define the subject prior to the agenda going out. No other changes were made.

Daniele

CITY COUNCIL AGENDA

Date: November 12, 2014
TO: City Council
FROM: Duane Burk, Director of Public Works
SUBJECT: Resolution No. 2014- 76, "Approving the Projects for Fiscal Year 2015-2016 Community Development Block Grant (CDBG) Program"

RECOMMENDATION: Resolution No. 2014-76, "Approving the Projects for Fiscal Year 2015-2016 Community Development Block Grant (CDBG) Program," and authorize staff to submit said applications to the Riverside County Economic Development Agency.

JUSTIFICATION: The approval of this resolution is essential in order to utilize federal grant funds available through the Community Development Block Grant (CDBG) Fiscal Year 2015-2016 program.

BACKGROUND: The City of Banning, through the Riverside County Economic Development Agency, has been submitting various projects annually for funding under the CDBG program. Requests for applications were emailed by the Publics Works Department September 16, 2014 to City Departments and non-profit organizations that serve the community within the City of Banning. Additionally, an outreach program was sent to the Press Enterprise on September 17, 2014, and was advertised on the City's Channel 10, Twitter, and Facebook, notifying the public of the availability of CDBG applications, as shown in Exhibit "A".

As part of the CDBG guidelines, the proposed projects/activities must meet the following criteria:

1. The project or activity must primarily benefit the low and moderate-income community.
2. The project or activity must aid in the prevention or elimination of slums and blight areas.
3. The project or activity must be designed to meet the Community's development needs and have a particular urgency.

The City received two service-related projects from non-profit organizations with recommended award amount, as shown on attached herein as Exhibit "B".

As set forth in the guidelines for utilization of the Community Development Block Grant funding, the City Council may allocate a portion of the fund up to 15% of the City's allocation to service oriented non-profit agencies.

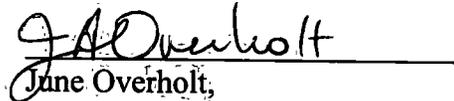
FISCAL DATA: The estimated funding under the CDBG Fiscal Year 2015-2016 program is approximately \$140,000.00. Upon approval of the City Council, the projects will be submitted to the Riverside County Economic Development Agency and it is anticipated that final funding approval will be conveyed to the City by September of 2015.

RECOMMENDED BY:



Duane Burk,
Director of Public Works

REVIEWED BY:



June Overholt,
Administrative Services Director/
Assistant City Manager

APPROVED BY:



Homer Croy, Interim
City Manager

RESOLUTION NO. 2014-76

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE PROJECTS FOR THE FISCAL YEAR 2015-2016 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

WHEREAS, the City of Banning has been submitting applications for projects/activities under the Community Development Block Grant (CDBG) program to the Riverside County Economic Development Agency annually; and

WHEREAS, on September 16, 2014, the City of Banning emailed out requests for applications to the eligible organizations that serve the Community within the City of Banning, and on September 17, 2014, an outreach program was sent to the Press Enterprise, and also advertised on the City's Channel 10, Twitter, and Facebook, notifying the public of the availability of CDBG applications, as shown in Exhibit "A"; and

WHEREAS, on October 14, 2014 at its regular meeting, the City Council appointed a committee to review the applications and on October 27, 2014 the applications were given to the committee and the recommendations as shown as Exhibit "B" and;

WHEREAS, the projects/activities submitted herein meet the CDBG program guidelines and/or requirements; and

WHEREAS, it is essential that the projects/activities be approved by the City Council through resolution in order for the City and its citizens to utilize the federally funded CDBG grant funds.

NOW, THEREFORE, BE IT RESOLVED as follows:

SECTION 1. Resolution No. 2014-76, approving the project/activities submitted for funding under the Community Development Block Grant programs for Fiscal Year 2015-2016 as listed in Exhibit "B" is hereby adopted.

SECTION 2. Staff is authorized to submit Fiscal Year 2015-2016 Community Development Block Grant program applications to Riverside Economic Development Agency for approval by their Board.

PASSED, ADOPTED AND APPROVED this 12th day of November, 2014.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk

**APPROVED AS TO FORM
AND LEGAL CONTENT:**

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2014-76, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of November, 2014.

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, City Clerk
City of Banning, California

EXHIBIT "A"

**OUTREACH PROGRAM NOTIFYING THE PUBLIC OF CDBG
APPLICATION AVAILABILITY FOR FY 2015-2016**

CITY OF BANNING
PRESS RELEASE

September 16, 2014

For Immediate Release
Contact: Kahono Oei (951) 922-3135

FOR IMMEDIATE RELEASE

SUBJECT: Applications available for Community Development Block Grants

The City of Banning is accepting applications for the Community Development Block Grant Program, for Fiscal Year 2015-2016.

The U.S. Department of Housing and Urban Development (HUD), through the Riverside County Economic Development (EDA) administers the CDBG funding. The funding will allow the community the opportunity to provide services within the City of Banning.

Eligible public services include but are not limited to:

- Healthcare
- Job training
- Childcare
- Services for the homeless
- Recreation programs
- Services for seniors and public safety services

Applications are available online at the Riverside County Economic Development Agency website: www.rivcoeda.org or hard copies are available at the Banning City Hall, Engineering Division. Please contact the Engineering Division at 951.922.3135, to obtain information regarding the application process.

Applications are due by October 16, 2014.

HB

EXHIBIT "B"

REQUESTED PROJECT AND SERVICE PROGRAMS

**Requested Projects for FY 2015-2016
Community Development Block Grant (CDBG) Program**

SERVICE RELATED PROJECTS

| NO. | AGENCY | DESCRIPTION | FY 2015-2016 REQUESTED | AD-HOC RECOMMENDATION |
|------------|--|--|-----------------------------------|----------------------------------|
| 1. | Boys and Girls Club | Teen – Town (Youth Development Services) | \$30,000.00 | \$5,000.00 |
| 2. | Stagecoach Days Association | Purchase and Installation of Bleachers at Dysart Park | \$50,000.00 | \$10,000.00 |
| | | | | |
| | Total | | \$80,000.00 | \$15,000.00 |

**Requested Project for FY 2015-2016
Community Development Block Grant (CDBG) Program**

CITY PROJECTS

| NO. | PROJECT NAME | DESCRIPTION | FY 2015-2016 REQUESTED | AD-HOC RECOMMENDATION |
|------------|--|--|-----------------------------------|----------------------------------|
| 1. | Street Improvements at Various Locations | Scope of work under this project includes grinding/cold planing of existing asphalt; grading, placing new A.C. and base; sidewalks, curbs, gutters, driveways, cross gutters, spandrels and handicap ramps; adjusting manholes, water meters boxes, and water valve covers to grade; removing and replacing water meter boxes, and mailboxes when required by the Public Works Inspector; striping improvements; and cleaning; etc., on various streets. | \$430,000.00 | \$60,000.00 |
| 2. | Replacement of Existing Lighting at Three Ball Fields and Fencing | Scope of work under this project includes installation and replacement of existing lighting at three (3) ball fields at Lions Park, which will allow staff to control lights remotely. In addition, replacement of ball field fencing and issues with accessibility will be addressed as necessary. | \$300,000.00 | \$65,000.00 |
| | Total | | \$730,000.00 | \$125,000.00 |

Description
Street Improvements at Various Locations

1. George Street: Hargrave Street to Almond Way (south side) 260'; curb/gutter, asphalt concrete, and aggregate base patch; handicap ramps.
2. 957 E George Street (north side): 70' curb/gutter, asphalt concrete, and aggregate base patch; 1150 S.F. sidewalk connecting to existing sidewalk.
3. Christie Street: Hargrave Street to Blanchard Street, 480' curb/gutter, asphalt concrete, and aggregate base patch (Almond Way to Blanchard Street on both sides), 2600' S.F. sidewalk , north side, handicap ramps.
4. Wilson Street: Almond Way to Blanchard Street, 1175 S.F. sidewalk; north side, 2 handicap ramps.
5. Hoffer Street: Phillips Street to Evans Street, 750' curb/gutter, asphalt concrete, aggregate base and paving.
6. 985 E. Williams Street (north side), 115' curb/gutter asphalt concrete, and aggregate base paving, handicap ramp.
7. Phillips Street: Williams Street to Nicolet Street, 424' curb/gutter asphalt concrete, and aggregate base paving (east/west intermittent), 3 handicap ramps.
8. Nicolet Street: Evans Street to Alessandro Road (north side), 1900' curb/gutter asphalt concrete, and aggregate base paving, 10 handicap ramps.
9. Barbour Street: Hargrave Street to Juarez Street, curb and gutter on both sides of street.
10. Wesley Street: Hargrave Street to Hathaway Street, curb and gutter on both sides of street.

CITY COUNCIL AGENDA

DATE: November 12, 2014

TO: Honorable Mayor and City Council

FROM: Fred Mason, Electric Utility Director

SUBJECT: Resolution 2014-77, "Awarding the Construction Contract for Project No. 2014-04EL, 'Demolition of the Building Located at 215 East Barbour Street'"

RECOMMENDATION: Adopt Resolution No. 2014-77, "Awarding the Construction Contract for Project No. 2014-04EL, 'Demolition of the Building Located at 215 East Barbour Street,'" to Graham Crackers Demo Inc. of Menifee, California for an amount "not to exceed \$28,322.76, plus a 10 % contingency, for a total of \$31,115.03.

BACKGROUND: The demolition of the building located at 215 East Barbour Street would eradicate the unused, now City-owned building and complete a necessary step towards improving the "City Yard" located at 176 East Lincoln Street.

In May of 2014 the City Council approved Resolutions 2014-31 and 2014-38 for the purchase of property located at 215 East Barbour Street in Banning. Staff had previously been given direction to try and acquire these properties, when feasible, to plan for current and future needs at the City Yard. The demolition of the building located on the property will increase the usable space of the City Yard and improve the functionality of the existing space.

The scope of work for Project No. 2014-04EL, "Demolition of the Building Located at 215 East Barbour Street," includes demolition and disposal of a one-story, wood structure with a composite shingle roof, including concrete slabs on grade, garage and patio areas, and demolition, filling and leveling of concrete cellar, as well as abandonment and sand fill of a 1200 gallon septic tank. Work shall include the capping of all connections to the public sewer system and removal of trees, landscaping and fencing, excluding perimeter fencing. Public utilities will be disconnected by City of Banning staff prior to demolition.

The demolition project was advertised for bids on September 26 and October 3, 2014. Two contractors attended a mandatory pre-bid meeting/walkthrough held at the City Yard and at the site on October 7, 2014. Graham Crackers Demo Inc. of Menifee, California, was the only responsible bidder that submitted a bid for the project on October 20, 2014, bid sheet is attached as Exhibit "A". The recommended agreement is attached as Exhibit "B".

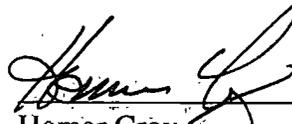
FISCAL DATA: Funds sufficient to cover the \$31,155.03, which includes a 10% contingency, are available in FY 2014-15 budget in Account No. 670-7000-473.90-15 (Building Improvements).

RECOMMENDED BY:



Fred Mason
Electric Utility Director

APPROVED BY:



Homer Croy
Interim City Manager

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

RESOLUTION NO 2014-77

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AWARDING THE CONSTRUCTION CONTRACT FOR PROJECT NO. 2014-04EL, "DEMOLITION OF THE BUILDING LOCATED AT 215 EAST BARBOUR STREET"

WHEREAS, the demolition of the building located at 215 East Barbour Street would eradicate the unused City-owned building and complete a necessary step towards improving the City Yard area of the City of Banning; and

WHEREAS, the project's scope of work includes demolition and disposal of a one-story, wood structure with a composite shingle roof, including concrete slabs on grade, garage and patio areas, and demolition, filling and leveling of concrete cellar, as well as abandonment and sand fill of a 1200 gallon septic tank. Work shall include the capping of all connections to the public sewer system and removal of trees, landscaping and fencing, excluding perimeter fencing; and

WHEREAS, the demolition project was advertised for bids on September 26 and October 3, 2014 and bids were received and opened on October 20, 2014, with one contractor bidding the job; and

WHEREAS, Graham Crackers Demo Inc. of Menifee, California, is the only responsible bidder to perform the work listed in the specifications for Project No. 2014-04EL, "Demolition of the Building Located at 215 East Barbour Street"; and

WHEREAS, funds are available in the FY 2014-15 budget in Account No. 670-7000-473.90-15, sufficient to cover the \$31,115.03 necessary to fund the costs of the structure's demolition;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning as follows:

SECTION 1. Adopt Resolution No. 2014-77, awarding the contract for Project No. 2014-04EL "Demolition of the Building Located at 215 East Barbour Street" to Graham Crackers Demo, Inc. of Menifee, California, and all other bids are hereby rejected.

SECTION 2. Authorize the City Manager to execute the contract agreement with Graham Crackers Demo Inc. of Menifee, California, for Project No. 2014-04EL, "Demolition of the Building Located at 215 East Barbour Street". This authorization will be rescinded if the contract agreement is not executed by both parties within forty-five (45) days of the date of this resolution.

SECTION 3. Authorize the Administrative Services Director to approve change orders within the 10% contingency of \$2,832.27.

PASSED, APPROVED AND ADOPTED this 12th day of November, 2014.

Deborah Franklin, Mayor
City of Banning

**APPROVED AS TO FORM AND
LEGAL CONTENT:**

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2014-77 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of November, 2014, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, City Clerk
City of Banning, California

Exhibit "A"

**SUMMARY OF BIDS RECEIVED
CITY OF BANNING**

PROJECT NO.: PROJECT NO. 2014-04EL

DESCRIPTION: DEMOLITION OF BUILDING LOCATED AT
215 E. BARBOUR STREET

BID OPENING DATE: October 20, 2014 **TIME:** 2:00 p.m.

| NAME OF BIDDER: | Add. 1 | | BID BOND | TOTAL BID AMOUNT: |
|--|--------|--|----------|-------------------|
| Graham Crackers Demo Inc. Menifee, CA | ✓ | | Yes | 28322.76 |
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VERIFIED BY: 


Exhibit "B"

SECTION 1.5
OF
PROCEDURAL DOCUMENTS

AGREEMENT

THIS AGREEMENT, made this 13th day of November, 2014 by and between the CITY OF BANNING, hereinafter called "Owner", and Graham Cracker's Demo Inc. doing business as _____ * hereinafter called "Contractor". * Insert "a corporation," "a partnership," or "an individual," as applicable.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, it is agreed that:

1. The Contractor will commence and complete **PROJECT NO. 2014-04EL, "DEMOLITION OF BUILDING LOCATED AT 215 EAST BARBOUR STREET,"** as per the plan and specifications.
2. The Contractor will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Project described herein.
3. The Contractor will commence the Work required by the Contract Documents on or before the date specified to commence Work in the Notice to Proceed and will complete the same within **30** working days unless the period for completion is extended otherwise by the Contract Documents.
4. Owner and Contractor have discussed the provisions of Civil Code 1671 and the damages, which may be incurred by Owner if the Work is not completed within the time specified in this Agreement. Owner and Contractor hereby represent that at the time of signing this Agreement, it is impractical and extremely difficult to fix the actual damage which will be incurred by owner if the Work is not completed within the number of working days allowed.
5. The Contractor hereby acknowledges that the plans and specifications are made as a part of this contract.
6. The Contractor agrees to perform all of the Work described in the Contract Documents and comply with the terms therein for the sum of \$28,322.76 or as shown in the Notice of Award; subject to additions and deductions, if any, in accordance with said documents. Payment shall not be made more often than once each thirty (30) days. Final payment shall be made thirty-five (35) days subsequent to recordation of Notice of Completion. Contractor may, at his sole cost and expense, substitute securities equivalent to any moneys withheld by the Owner to ensure performance under the contract. Such securities shall be deposited with the Owner or with a state or federally chartered bank acceptable to owner as escrow agent who shall pay such moneys to the Contractor upon satisfactory completion of the contract. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any

interest thereon. Securities eligible for substitution shall include those listed in Public Contract Code Section 22300.

7. The term "Contract Documents" means and includes the following:
 - a. Invitation for Bids
 - b. Instruction to Bidders
 - c. Bid
 - d. Bid Bond
 - e. Agreement
 - f. Payment Bond
 - g. Contract Performance Bond
 - h. Certificates of Insurance and Endorsements
 - I. Notice of Award
 - j. Notice to Proceed
 - k. Change Orders
 - l. General Conditions
 - m. Supplemental General Conditions
 - n. Special Conditions, Technical Specification Provisions and Standard Drawings and Details
 - o. Drawings prepared by the City of Banning or consultant and specifications
 - p. Addenda:

8. The owner will pay to the Contractor in the manner and at such times as set forth in the General Conditions such amounts as required by the Contract Documents.

9. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

10. Should any litigation or arbitration be commenced between the parties hereto concerning said project, any provisions of this Contract, or the rights and obligations of either in relation thereto the party, Owner or Contractor, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for his attorney's fees in such litigation, and court costs.

11. Pursuant to Section 1770 et. seq., the following, of the California Labor Code, the successful bidder shall pay not less than the higher of State or Federal prevailing rate of per diem wages. The owner has obtained the State Prevailing wage rates from the California Department of Industrial Relations. Copies of such prevailing rate of per diem wages are on file at the office of the owner, which copies shall be made available for review to any interested party on request. IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in copies each of which shall be deemed an original on the date first above written.

OWNER:

CITY OF BANNING

By: _____

Name: Homer Croy
Please Type

Title: Interim City Manager

ATTEST:

By: _____

Name: _____

Title: _____

CONTRACTOR:

(SEAL)

By: _____

Name: _____

Title: _____
Please Type

Address: _____

Contractor's License No. _____

ATTEST:

By: _____

Name: _____

Title: _____

All signatures on this Contract Agreement on behalf of the Contractor must be acknowledged before a Notary Public. In the event that the Contractor is a corporation, the President/Vice President and the corporate secretary of the corporation must sign and the corporate seal must be affixed thereto.

CORPORATE CERTIFICATE

I, _____, certify that I am the Corporate Secretary of the _____ Corporation named as CONTRACTOR in the foregoing contract; that _____, who signed said contract on behalf of the CONTRACTOR was then _____ of said corporation; and that said contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Name: _____

(SEAL)

ATTEST:

Name _____
(Please Print)

Title _____

SECTION 1.6
OF
PROCEDURAL DOCUMENTS

PAYMENT BOND
(CALIFORNIA PUBLIC WORKS)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the City of Banning
(referred to hereinafter as "Obligee") has awarded to Graham Cracker's Demo, Inc. (hereinafter designated as the "Contractor") a contract dated November 13, 2014, for work described as follows:

PROJECT NO. 2014-04EL, "DEMOLITION OF BUILDING LOCATED AT 215 EAST BARBOUR STREET" (hereinafter referred to as the "Public Works Contract"); and

WHEREAS said Contractor is required to furnish a bond in connection with said Public Works Contract, and pursuant to Section 3247 of the California Civil Code;

NOW, THEREFORE, we Graham Cracker's Demo, Inc.,
the undersigned Contractor, as Principal, and _____,
_____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the CITY OF BANNING and to any and all persons, companies or corporation entitled to file stop notices under Section 3181 of the California Civil Code in the sum of Twenty Eight Thousand Three Hundred Twenty Two and 76/100 Dollars (\$28,322.76), said sum being not less than 100 percent of the total amount payable by the said obligee under the terms of the said Public Works Contract, for which payment will and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if said Contractor, his or its heirs, executors, administrators, successors or assigns, or Subcontractors, shall fail to pay for any materials, provisions, vendor or other supplies or teams, implements or machinery used in, upon, for or about the performance of the Public Work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of said Contractor and his Subcontractors pursuant to Section 18806 of the Revenue and Taxation Code with respect to such work and labor as required by the provisions of Section 3247 through 3252 of the Civil Code, the Surety or Sureties hereon will pay for the same in an amount not exceeding the sum specified in this bond,

otherwise the above obligation shall be void. In case suit is brought upon this bond, the said Surety or Sureties will pay a reasonable attorney's fee to be fixed by the Court. In addition to the provisions herein above, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to serve stop notices under Section 3181 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Public Work Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

No final settlement between the Obligee and the Contractor hereunder shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2014.

PRINCIPAL:

By _____

SURETY:

By _____

Attorney-in-fact

IMPORTANT: Surety companies executing Bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance Code.

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF _____) s.s.

On _____ before me, personally appeared _____
_____ personally known to me; or proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
(he/she/they) executed the same in his/her/their/ authorized capacity(ies), and that the entity upon
behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
(SEAL)

Signature of Notary Public

CAPACITY CLAIMED BY SIGNER:

Though statute does not require the notary to fill in the data below, doing so may prove
invaluable to persons relying on the document.

Individual (s)
Corporate Officer (s) _____ and _____
Titles _____ and _____
Partner(s) _____ Limited _____ General
Attorney-in-fact
Trustee (s)
Guardian/Conservator
Other: _____

Signer is representing: _____

ATTENTION NOTARY: Although the information requested below is optional, it could
prevent fraudulent attachment of this certificate to an unauthorized document.

Title of type of document: _____
Number of pages: _____
Date of document: _____
Signer(s) other than named above: _____

This Certificate must be attached to the document described above

SECTION 1.7
OF
PROCEDURAL DOCUMENTS

CONTRACT PERFORMANCE BOND
(CALIFORNIA PUBLIC WORK)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the CITY OF BANNING
(referred to hereinafter as "Obligee") has awarded to Graham Cracker's Demo, Inc.
(hereinafter designated as the "Contractor") a contract dated November 13, 2014, for
work described as follows:

PROJECT NO. 2014-04EL, "DEMOLITION OF BUILDING LOCATED AT 215 EAST BARBOUR STREET" (hereinafter referred to as the "Public Works Contract"); and

WHEREAS, the Contractor is required by said Public Works Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

NOW, THEREFORE, we Graham Cracker's Demo, Inc.,
the undersigned Contractor, as Principal, and _____, a
corporation organized and existing under the laws of the State of _____, and
duly authorized to transact business under the laws of the State of California, as Surety, are held
and firmly bound unto the CITY OF BANNING in the sum of Twenty Eight Thousand Three
Hundred Twenty Two and 76/100 Dollars (\$28,322.76), said sum being not less than 100 percent
of the total amount payable by the said obligee under the terms of the said Public Works
Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors
and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the bounden Principal, his or its
heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by,
and well and truly keep and perform the covenants, conditions and agreements in the said Public
Works Contract and any alteration thereof made as therein provided, on his or its part, to be kept
and performed at the time and in the manner therein specified, and in all respects according to
their intent and meaning; and shall faithfully fulfill the one-year guarantee of all materials and
workmanship; and indemnify and save harmless the Obligee, its officers and agents, as stipulated
in said Public Works Contract, then this obligation shall become null and void; otherwise it shall
be and remain in full force and effect. In case suit is brought upon this bond, the said Surety will
pay to Obligee a reasonable attorney's fee to be fixed by the Court.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of
time, alteration or additions to the terms of the said Public Works Contract or to the work to be

performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

No final settlement between the Obligee and the Contractor hereunder shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2014.

PRINCIPAL:

By _____

SURETY:

By _____

Attorney-in-fact

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged, \$_____. (The above must be filled in by corporate surety.)

IMPORTANT: Surety companies executing Bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance Code.

SECTION 1.8
OF
PROCEDURAL DOCUMENTS

CERTIFICATES OF INSURANCE
AND ENDORSEMENTS

The Contractor shall not commence any work under the Contract Documents until he obtains, at his own expense, all required insurance as stipulated by the Owner. The required insurance shall be provided by the Contractor in conformance with the requirements of Article 13 through 16 of the General Conditions of these Contract Documents and includes the following:

- California Workers' Compensation Insurance
- Commercial General Liability Insurance
- Commercial Automobile Liability Insurance

The insurance company or companies utilized by the Contractor shall be authorized to transact business in the State of California and to issue policies in the amounts required in the General Conditions of these Contract Documents.

SECTION 1.9
OF
PROCEDURAL DOCUMENTS

NOTICE OF AWARD

TO: Graham Crackers Demo Inc.

25125 Felswood Lane

Menifee, Ca 92584

Project Description: **PROJECT NO. 2014-04EL, "DEMOLITION OF BUILDING LOCATED AT 215 EAST BARBOUR STREET."** The Owner has considered the Bid submitted by you for the above described Work in response to its Invitation for Bids dated September 23, 2014, and the instruction to Bidders.

You are hereby notified that your Bid has been accepted in the amount of \$28,322.76.

You are required, as stated by the Instruction for Bidders, to execute the Agreement and furnish the required Contractor's Payment Bond, Performance Bond, City Business License, copy of Contractor License, and Certificates of Insurance and Endorsements within fifteen (15) calendar days from the date of this Notice.

If you fail to execute said Agreement and to furnish said Bonds and Certificates of Insurance and Endorsements within fifteen (15) days from the date of this Notice, said Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of the Acceptance Notice to the Owner, including the Bonds, Insurance, Business License, Contractor's License, etc.

Dated this 13th day of November, 2014.

CITY OF BANNING (Owner)

I-36

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged by

_____ THIS _____ day of
_____, 2014.

Contractor

By _____

Title _____

SECTION 1.10
OF
PROCEDURAL DOCUMENTS

NOTICE TO PROCEED

To: Graham Crackers Demo Inc.

25125 Felswood Lane

Menifee, Ca 92584

Project Description: **PROJECT NO. 2014-04EL, "DEMOLITION OF BUILDING LOCATED AT 215 EAST BARBOUR STREET."**

You are hereby notified to commence work in accordance with the Agreement dated November 13, 2014, on or before _____, 2014, and you are to complete the work within **30** working days thereafter. The date of completion of all work is therefore _____, 2014.

You are required to return an acknowledged copy of the Acceptance of Notice to the owner.

Dated this 13th day of November, 2014.

CITY OF BANNING (Owner)

ACCEPTANCE OF NOTICE

Receipt of the above Notice to Proceed is hereby acknowledged by

_____ THIS _____ day of
_____, 2014.

Contractor

By _____

Title _____

SECTION 1.11
OF
PROCEDURAL DOCUMENTS

CHANGE ORDER

Change Order No. 01

Purchase Order No.

Date:

Agreement Date:

Sheet of

Owner: CITY OF BANNING

Project: **PROJECT NO. 2014-04EL, "DEMOLITION OF BUILDING LOCATED AT
215 EAST BARBOUR STREET"**

Contractor: Graham Crackers Demo Inc.

The following changes are hereby made to the Contract Documents:

JUSTIFICATIONS:

CHANGE TO CONTRACT PRICE

Original Contract Price \$

Current Contract Price adjusted by previous
Change Order(s) \$

Contract Price due to this Change Order will
be (increased) (decreased) \$ _____

New Contract Price including this Change Order \$ _____

CHANGE TO CONTRACT TIME

Contract Time will be (increased) (decreased) _____
(Working Days)

Date for Completion of all Work _____
(Date)

APPROVALS REQUIRED

To be effective, this order must be approved by the Owner, or as may otherwise be required by the Supplemental General Conditions.

Recommended by: _____ Date: _____

Approved by: _____ Date: _____

Accepted By: _____ Date: _____

SECTION 1.12
OF
PROCEDURAL DOCUMENTS

RELEASE

Owner: _____

Contractor: _____

Project: **PROJECT NO. 2014-04EL, "DEMOLITION OF BUILDING
LOCATED AT 215 EAST BARBOUR STREET"**

In consideration of the final payment of the undisputed contract amounts of \$28,322.76 relating to the above referenced project, the Contractor hereby Releases the Owner from any and all claims and liability for payment on the project except for any outstanding disputed amount listed below.

CONTRACTOR:

By: _____

Title: _____

Dated: _____

ATTEST:

Name: _____

(Please Print)

Title: _____

SECTION II - GENERAL CONDITIONS

ARTICLE 1. DEFINITIONS

- (a) Action of the City Council is a vote of a majority of a quorum of the Banning City Council at a lawful meeting.
- (b) Addenda are the changes in specifications, drawings, contract documents, and plans which have been authorized in writing by the City, and which alter, explain, or clarify the contract documents.
- (c) Approval means written authorization by the City for specific applications within the Contract.
- (d) As shown, as indicated, as detailed refer to drawings accompanying the specifications.
- (e) Construction Manager is the person or entity designated by the City to act as its representative in managing the day-to-day affairs of the construction process. The Manager will work closely with the City Engineer and have the same rights of access to the Project as does the City.
- (f) Contract, contract documents includes all contract documents, to wit: Notice Inviting Bids, Affidavit of Noncollusion, Instructions to Bidder, Designation of Subcontractor, Worker's Compensation Certificate, Performance Bond, Payment Bond, Insurance Policies, Guarantee, Release, Contractor's Proposal, Equal Opportunity Certificate, General Conditions, Supplementary Conditions, if any, Drawings, Plans, Specifications, the Agreement form and all modifications, addenda, and amendments thereto.
- (g) Contractor, City, or Owner are those mentioned as such in the Agreement. They are treated throughout the contract documents as if they are of singular number and neuter gender.
- (h) Engineer means the City Engineer, or other professional engaged by the City to design and oversee completion of the Project.
- (i) Project is the planned undertaking as provide in the contract documents by City and Contractor.
- (j) Provide shall include "provide complete in place," that is "furnish and install."
- (k) Safety Orders are those issued by any state or federal agency.
- (l) Standards, Rules, and Regulations referred to are the standard specifications (Green Book) and shall be considered as one and a part of these specifications within limits specified.
- (m) Subcontractor, as used herein, includes those having direct contract with Contractor and one who furnished material worked to a special design according to plans, drawings, and specifications of this work, but does not include one who merely furnishes material not so worked.
- (n) Surety is the person, firm or corporation that executes as surety the Contractor's Performance Bond and Payment Bond.
- (o) Work of the Contractor or subcontractor includes labor or materials (including, without limitation, equipment and appliances) or both, incorporated in, or to be incorporated in, the construction covered by the complete Contract.
- (p) Workers include laborers, workers, or mechanics.

ARTICLE 2. STATUS OF CONTRACTOR

- (a) Contractor is, and shall at all times be deemed, wholly responsible for the manner in which it performs the service required of it by the terms of this Contract. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the City and Contractor or any of Contractor's agents or employees. Contractor assumes exclusively the responsibility for the acts of its employees and agents as they relate to the services to be provided during the course and scope of their employment. Contractor, its agents, and employees shall not be entitled to any rights or privileges of City employees. City shall be permitted to monitor the activities to determine compliance with the terms of this Contract.
- (b) Contractors are required by law to be licensed and regulated by the Contractor's State License Board. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, 3132 Bradshaw Road, Post Office Box 2600, Sacramento, California 95826.
- (c) The Contractor and the Sub Contractors shall obtain the City Business License prior to the start of work.

ARTICLE 3. CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY.

Before Contractor makes any change in the name or legal nature of the Contractor's entity, Contractor shall first notify the City and cooperate with City in making such changes as the City may request in this Contract.

ARTICLE 4. CONTRACTOR'S SUPERVISION.

- (a) During progress of the work, Contractor shall keep on the premises (including both the site and the plant) a superintendent satisfactory to City. Before Commencing the work herein , Contractor shall give written notice to City of the name and Statement of Qualifications of such superintendent. Superintendent shall not be changed except with written consent of City, unless a superintendent proves to be unsatisfactory to Contract or and ceases to be in its employ, in which case, Contractor shall notify City in writing. Superintendent shall represent Contractor and all directions given to superintendent shall be as binding as if given to Contractor.
- (b) The Contractor represents itself to City as a skilled, knowledgeable, and experienced contractor. The Contractor shall carefully study and compare the contract documents with each other and shall at once report to the City any errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the City for damage resulting from errors, inconsistencies, or omissions in the contract documents unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to report it to the City or unless a similarly skilled, knowledgeable, and experienced Contractor would have discovered such error, inconsistency, or omission. The Contractor shall perform no portion of the work at any time without contract documents or, where required, approved shop drawings, product data, or samples for such portion of the work.
- (c) The Contractor shall verify all indicated dimensions before ordering materials or equipment, or before performing work. The Contractor shall take field measurements, verify field conditions, and shall carefully compare such field measurements and conditions and other information known to the Contractor with the contract documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the City at once. Upon

commencement of any item of work, the Contractor shall be responsible for dimensions related to such item of work and shall make any corrections necessary to make work properly fit at no additional cost to City.

- (d) Omissions from the drawings or specifications, or the incorrect description of details of work which are manifestly necessary to carry out the intent of the drawing and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or incorrect described work, but they shall be performed as if fully correctly set forth and described in the drawings and specifications.

ARTICLE 5. SUBCONTRACTORS

- (a) Contractor agrees to bind every subcontractor to the terms of the Contract as far as such terms are applicable to subcontractor's work. If Contractor shall subcontract any part of this Contract, Contractor shall be fully responsible to City for acts and omissions of any subcontractor and of persons either directly or indirectly employed by any subcontractor. Nothing directly or indirectly employed by any subcontractor. Nothing contained in the contract documents shall create any contractual relation between any subcontractor and City, nor shall this Contract be construed to be for the benefit of any subcontractor.
- (b) City's consent to any subcontractor under this Contract shall not in any way relieve Contractor of any obligations under this Contract and no such consent shall be deemed to waive any provision of this Contract.
- (c) Pursuant to section 4104 of the Public Contract Code, Contractor must submit with its bid a Designation of Subcontractors. If Contractor specifies more than one subcontractor for the same portion of work or fails to specify a subcontractor, and such portion of the work exceeds one-half of one percent of the total bid, Contractor agrees that it is fully qualified to perform and shall perform such work itself, unless Contractor provides for substitution or addition of subcontractors. Substitution or addition of subcontractors shall be permitted only as authorized by sections 4100, et seq., of the Public Contract Code.

ARTICLE 6. NOTICE OF TAXABLE POSSESSORY INTEREST.

The terms of this Contract may result in the creation of possessory interest. If such a possessory interest is vested in a private party to this Contract, the private party may be subjected to the payment of property taxes levied on such interest, and City shall not be obligated to pay said taxes.

ARTICLE 7. ASSIGNMENT OF ANTITRUST ACTIONS.

Section 4551 of the Government Code provides:

In entering into a public works contract or a subcontract to supply good, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body {City} all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 {commencing with Section 16700} of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works Contract or the subcontract. This assignment shall

be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties. Contractor, for itself and all subcontractors, agrees to assign the City all rights, title, and interest in and to all such causes of action Contractor and all subcontractors may have. This assignment shall become effective at the time City tenders final payment to the Contractor and Contractor shall require assignments from all subcontractors to comply herewith.

ARTICLE 8. OTHER CONTRACTS

- (a) City reserves the right to let other contracts in connection with this work. Contract shall afford other contracts reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly connect and coordinate its work with theirs.
- (b) If any part of Contractor's work depends for proper execution or results upon work of any other contract, the Contractor shall inspect and promptly report to City, in writing, any defects in such work that render it unsuitable for such proper execution and results. Contractor will be held accountable for damages to City for that work which it failed to inspect or should have inspected. Contractor's failure to inspect and report shall constitute its acceptance of other contracts' work as fit and proper for reception of its work, except as to defects which may develop in other contractors' work after execution of Contractor's work.
- (c) To insure proper execution of its subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the City in writing any discrepancy between executed work and the contract documents.
- (d) Contractor shall ascertain to its own satisfaction the scope of the work and nature of any other Contracts that have been or may be awarded by City in prosecution of the work to the end that Contractor may perform this Contract in the light of such other contract, if any.
- (e) Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the site of the project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the project. If simultaneous execution of any contract for the project is likely to cause interference with performance of some other Contract or contracts, City shall decide which contract shall cease work temporarily and which contractor shall continue whether work can be coordinated so that contractors may proceed simultaneously.
- (f) City shall not be responsible for any damages suffered or extra costs incurred by Contractor resulting directly or indirectly from award or performance or attempted performance of any other contract or contracts on the project, or caused by any decision or omission of City respecting the order of precedence in performance of contracts.

ARTICLE 9. OCCUPANCY

City reserves the right to occupy the project site or buildings at any time before completion of the work, and such occupancy shall not constitute final acceptance of any part of work covered by this Contract, nor shall such occupancy extend the date specified for completion of the work.

ARTICLE 10. CITY'S RIGHT TO TERMINATE CONTRACT.

- (a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified or any extension thereof, or fails to complete the work within such time, or if the Contractor should file a petition for relief as a debtor, or should relief be ordered against Contractor as a debtor, under Title 11 of the United States Code, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough workers trained and skilled in the work they are performing or the materials indicated or specified to complete the work in the time specified, or if Contractor should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, or ordinances or instructions of City, or if Contractor or its subcontractors should otherwise be guilty of a substantial violation of any provision of this Contract, then City may, without prejudice to any other right remedy, serve written notice upon Contractor and its surety of City's intention to terminate this Contract, such notice to contain the reasons for such intention to terminate, and unless within ten (10) days after the service of such notice such conditions shall cease or such violation shall cease and arrangements satisfactory to City for the correction thereof be made, this Contract shall, upon the expiration of said ten days, cease and terminate.
- (b) In the event of any such termination, City shall immediately serve written notice thereof upon surety and Contractor, and surety shall have the right to take over and perform this Contract; provide, however, that if surety, within seven (7) days after service upon it of said notice of termination, does not give City written notice of its intention to take over and perform this Contract and does not commence performance thereof within fifteen (15) days from date of serving such notice of termination by City on surety, City may then take over the work and prosecute same to completion by contract or by any other method it may deem advisable for the account and at the expense of Contractor, and Contractor and its surety shall be liable to City for any excess cost or other damages incurred by the City. Time is of the essence in this Contract. If the City takes over the work as herein above provided, the City may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the work and necessary thereof.
- (c) If the expense of finishing the work, including compensation for additional architectural, managerial, and administrative service expense, shall exceed the unpaid balance of the Contract, Contractor shall pay the differences to the City. Expense incurred by City as herein provided, and damage incurred through Contractor's default, shall be certified to City.
- (d) The foregoing provision is in addition to and not in limitation of any other rights or remedies available to the City.
- (e) If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) days by the Owner or under an order of court or other public authority, or the Engineer fails to act on any request for payment within thirty (30) days after it is submitted, or the Owner fails to pay the Contractor substantially the sum approved by the Engineer or awarded by arbitrators within thirty (30) days of its approval and presentation, then the Contractor may, after ten (10) days from delivery of a Written Notice to the Owner and the Engineer terminate the Contract and recover from the Owner payment for all work executed and all expenses sustained. In addition and in lieu a request for payment or if the Owner has failed to act on a request for payment or if the Owner has failed to make any payment as aforesaid, the Contractor may upon ten (10) day Written Notice to the owner and the Engineer stop the work until he has been paid all amounts then due, in which event and upon resumption of the work, change orders shall be

issued or adjusting the contract price or extending the contract time or both to compensate for the costs and delays attributable to the stoppage of the work.

- (f) If the performance of all or any portion of the work is suspended, delayed, or interrupted as a result of a failure of the owner or Engineer to act within the time specified in the Contract Documents, or if not time is specified, within a reasonable time, and adjustment in the Contract Price or an extension of the Contract Time, or both, shall be made by Change Order to compensate the Contract of the costs and delays not necessarily caused by the failure of the Owner or Engineer.

ARTICLE 11. CONTRACT SECURITY - BONDS.

Contractor shall furnish to City a surety bond in an amount equal to 100 percent of Contract price as security for faithful performance of this Contract and shall furnish a separate bond in 100 percent of the Contract price as security for payment of persons performing labor and furnishing materials in connection with this Contract. Aforesaid bonds shall be in the form set forth in these contract documents.

ARTICLE 12. SUBSTITUTION OF SECURITIES.

- (a) Pursuant to the requirements of the Public Contract Code section 22300, upon Contractor's request, City will make payment to Contractor of any funds withheld from payments under this Contract if Contractor deposits with the City or in escrow with a California or federally chartered bank acceptable to City, securities eligible for the investment of State Funds under Government Code section 16430 or bank or savings and loan certificates of deposit, upon the following conditions:
 - (1) Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.
 - (2) All expenses relating to the substitution of securities under said section 22300 and under this clause, including, but not limited to City's overhead and administrative expenses, and expenses of escrow agent shall be the responsibility of the Contractor.
 - (3) Securities or certificates of deposit substituted for monies withheld shall be of a value equivalent to at least the amounts of retention to be paid to Contractor pursuant to this paragraph.
 - (4) If Contractor shall choose to enter into an escrow agreement, such agreement shall be in the form prescribed by Public Contract Code section 22300.
- (b) To minimize the expense cause by such substitution of securities, Contractor shall, prior to or at the time Contract requests to substitute security, deposit sufficient security to cover the entire amount to be then withheld and to be withheld under the General Conditions of this Contract. Should the value of such substituted security at any time fall below the amount for which it was substituted, or any other amount which the City determines to withhold, Contractor shall immediately and, at Contractor's expense, deposit additional security qualifying under section

22300 until the total security deposited is equivalent to no less than the amount subject to withholding under this Contract.

- (c) If any provisions of this Article shall be found to be illegal or unenforceable, the remaining provisions of this Article shall remain in force and effect, and the illegal or unenforceable provision shall be deemed stricken.

ARTICLE 13. FIRE INSURANCE.

- (a) At the request of City, Contractor will procure, at Contractor's own expense, and before commencement of any work under this Contract, fire insurance on the project with course of construction, vandalism, and malicious mischief clauses attached. Amount of fire insurance shall be sufficient, in City's sole judgment, to protect against loss or damage in full until work is accepted by City.
- (b) Contractor shall submit proof of insurance and shall provide endorsements on the forms provided by the City. Such endorsements shall be submitted concurrently with the contract documents.

ARTICLE 14. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE.

- (a) Contractor shall take out and maintain during the life of this Contract such public liability, automobile, and property damage insurance to protect Contractor and City from all claims for personal injury, including accidental death, to any person (including, as to City, injury or death to Contractor's or subcontractor's employees), as well as from all claims for property damage arising from operations under this contract, in the amount set forth in the Supplemental General Conditions.
- (b) Contractor shall require its subcontractors, if any, to take out and maintain similar public liability and property damage insurance in like amounts or shall have the subcontractors named as "additional insured" on Contractor's policy.
- (c) Contractor shall submit proof of insurance and shall provide endorsements on the forms provided by the City. Such endorsements shall be submitted concurrently with the contract documents. The Contractor will not commence any work until he obtains at his own expense all required insurance. Such insurance must have the approval of the Owner as to limit, form and amount. The Contract will not permit any subcontractor to commence work on this project until the same insurance requirements have been complied with by such subcontractor.

The types of insurance the Contractor is required to obtain and maintain for the full period of the Contract will be Workers' Compensation Insurance, Comprehensive General Liability Insurance, all "All Risk" insurance as detailed in the following portions of these Specifications.

Any insurance bearing on adequacy of performance will be maintained after completion of the project for the full guarantee period.

Nothing contained in these insurance requirements is to be construed as limiting the extent of the contractor's responsibility for payment of damages resulting from his operations under this contract.

As evidence of specified insurance coverage, the Owner may in lieu of actual policies, accept certificates issued by the insurance carrier showing such policies in force for the specified period. Each policy or

certificate will bear an endorsement or statement waiving right of cancellation or reduction in coverage without forty-five (45) days' notice in writing to the Owner.

Before the agreement between the Owner and the Contractor is entered into, the Contractor will submit written evidence that he and all subcontractors have obtained for the period of the Contract, full Workers' Compensation Insurance coverage for all persons whom they employ in carrying out the work under this Contract. This insurance will be in strict accordance with the requirements of the most current and applicable State Workers' Compensation Insurance laws.

Before commencement of the work, the Contractor shall submit written evidence that he and all his subcontractors have obtained for the period of the Contract, full comprehensive General Liability Insurance including completed operating insurance, and Vehicle Liability Insurance coverage. This coverage will provide for both bodily injury and broad form property damage.

The bodily injury portion will include coverage for injury, sickness or diseases and death, arising directly or indirectly out of, or in connection with, the performance of work under this contract, and will provide for a limit of not less than one million dollars (\$1,000,000.00) for all damages arising out of bodily injury, sickness, or disease to or death per each occurrence.

The property damage portion will provide for a limit of not less than one million dollars (\$1,000,000.00) for all damages arising out of injury to or destruction of property of others arising directly indirectly out of or in connection with the performance of work under this Contract an in any one occurrence including explosion, collapse and underground exposure.

A combined single limit policy with aggregate limits in the amount of two million dollars (\$2,000,000.00) will be considered equivalent to the required minimum limits.

Contractor to furnish "All Risk" insurance, excluding flood and earthquake, unless otherwise specified covering the project during construction, to include all materials and equipment to be incorporated therein while at the construction site and which in transit for not less than the amount of the Contract. The policy shall name the Contractor, its subcontractors and the Owner as name insured. Such policy shall provide that written Notice shall be given to the Owner, forty-five (45) days prior to cancellation or material change of any protection.

Such insurance may have a deductible clause by "NOT TO EXCEED ONE THOUSAND (\$1,000.00).

The Contractor shall assume liability for an agrees to save the Owner, the Engineer, his consultants, the County of Riverside and each of their officers and employees and agents, harmless and indemnify them from every expense, liability or payment, including attorneys' fee, engineers' fees and court costs, by any reason of any damage or injury (including death) of persons or property arising or alleged to arise through any act or omission of the Contractor, his agents, subcontractor, servants or employees, or any of them, or from the conditions or the work of Contractor, or any part thereof, while directly or indirectly arising in any way from the work done or in the guarding of it in connection with any matters et herein, but not including the sole negligence of the Owner, the Engineer and his consultants, and each of their officers, employees and agents.

ARTICLE 15. WORKERS' COMPENSATION INSURANCE.

- (a) In accordance with the provisions of section 3700 of the California Labor Code, the Contractor and every subcontractor shall be required to secure the payment of compensation to its employees.

- (b) The Contractor shall provide, during the life of this Contract Workers' Compensation Insurance for all of its employees engaged in work under this Contract, on or at the site of the project, and in case any of its work is sublet, the Contract shall require the subcontractor, similarly, to provide workers' compensation insurance for all the latter employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the site of the project, is not protected under the Workers' Compensation statute, the Contractor shall provide, or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected before subcontractor commence work. The Contractor shall file with the City certificates of its insurance protecting workers, and a 45-day notice shall be provided to City before the cancellation or reduction of any policy of Contractor or subcontractor.
- (c) Contractor shall submit proof of insurance and shall provide endorsements on the forms provided by the City. Such endorsements shall be submitted concurrently with the contract documents.

ARTICLE 16. PROOF OF CARRIAGE OF INSURANCE.

- (a) Contractor shall not commence work, nor shall it allow any subcontractor to commence work, under this contract until all required insurance and certificates have been obtained and delivered in duplicate to, and approved by, City.
- (b) Pursuant to Insurance Code section 674, certificates and insurance policies shall include the following:
 - (1) A clause stating:

“This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to City stating date of cancellation or reduction. Date of cancellation or reduction may not be less than forty-five (45) days after date of mailing notice.”
 - (2) Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
 - (3) Statement that the City be named additional insured under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by the City.
- (c) Contractor shall submit proof of insurance and provide endorsements on the forms provide by the City. Such endorsements shall be submitted concurrently with the contract documents.

ARTICLE 17. DRAWINGS AND SPECIFICATIONS.

- (a) Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The plans and specifications are made as a part of the contract.
- (b) Materials or work described in words which so applied has a well known technical or trade meaning shall be deemed to refer to such recognized standards.
- (c) It is not the intention of the Contract to go into detailed description of any material and/or methods commonly known to the trade under the “trade name” or “trade term.” The mere mention or notation of such “trade name” or “trade term” shall be considered a sufficient notice

to Contractor that it will be required to complete the work so name with all its appurtenances according to the best practices of the trade.

- (d) The naming of any material and/or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and/or labor therefore, as per best practices of the trade(s) involved, unless specifically noted otherwise.
- (e) Figured dimensions on drawings shall govern, but work not dimensioned shall be as directed. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Large scale details shall take precedence over smaller scale drawings as to shape and details of construction. Specifications shall govern as to materials, workmanship, and installation procedures. Drawings and specifications are intended to be fully cooperative and to agree. However, if Contractor observes that drawings and specifications are in conflict, Contractor shall promptly notify the City in writing, and any necessary changes shall be adjusted as provided in the Article entitled "Changes and Extra Work." The specifications calling for the higher quality material or workmanship shall prevail.
- (f) Specifications and accompanying drawings are intended to delineate and describe the project and its component parts to such a degree as to enable skilled and competent contractors to intelligently bid upon the work, and to carry said work to a successful conclusion.
- (g) Drawings and specifications are intended to comply with all laws, ordinances, rules, and regulations of constituted authorities having jurisdiction, and where referred to in the contract documents, said laws, ordinances, rules, and regulations shall be considered as a part of said Contract within the limits specified. The Contractor shall bear all expenses of correcting work done contrary to said laws, ordinances rules, and regulations if the Contractor knew or should have known that the work as performed is contrary to said laws, ordinances, rules, and regulations if the Contractor performed same (1) without first consulting the City for further instructions regarding said work or (2) disregarded the City's instructions regarding said work.
- (h) Questions regarding interpretation of drawings and specifications shall be clarified by the City Engineer. Should the Contractor commence work or any part thereof without seeking clarification, Contractor waives any claim for extra work or damages as a result of any ambiguity, conflict, or lack of information.
- (i) Contractor will be furnished, free of charge, three sets of permitted documents, three sets of specifications, and three sets of drawings; he is to provide, at his own expense, all additional copies which he requires for his operation. He shall maintain an accurate record of all copies made and shall return or otherwise account for all copies at the end of the project.
- (j) No part of this document may be photocopied or otherwise replicated in any manner without the prior express written authorization of the City of Banning. Any use of this document without having first paid the appropriate fee to the City of Banning shall cause a defect in any bid submitted thereunder, for which cause the bid shall be rejected in its entirety, and constitute a waiver of the bidder's right to participate in the bidding process.

ARTICLE 18. OWNERSHIP OF DRAWINGS.

All plans, drawings, designs, specifications, and other incidental architectural and engineering work or materials and other contract documents and copies thereof furnished by City are its property. They are

not to be used in other work and, with the exception of signed sets of the Contract, are to be returned to it on request at completion of work.

ARTICLE 19. DETAIL DRAWINGS AND INSTRUCTIONS.

- (a) In case of ambiguity, conflict, or lack of information, City shall furnish, with reasonable promptness, additional instructions by means of drawings or otherwise, necessary for proper execution of work. All such drawings and instructions shall be consistent with contract documents, true developments thereof, and reasonably inferable therefrom.
- (b) Work shall be executed in conformity therewith and Contractor shall do no work without proper drawings and instructions.
- (c) The City will furnish necessary details to more fully explain the work, which details shall be considered as part of the contract documents.
- (d) Should any details require work and costs beyond those which reasonably should have been included in the Contract, Contractor shall give written notice thereof to the City within ten (10) days of the receipt of same. In case no notice is given to the City within ten (10) days, it will assumed the details are reasonable development of the scale drawings. In case notice is given, then the claim will be considered and, if found justified, the City will either modify the drawings or shall recommend a change order for the extra work involved.
- (e) All parts of the described and shown construction shall be of the quality of their respective kinds shown in the plans or as specified, and the Contractor is hereby advised to use all diligence to become fully involved as to the required construction and finish, and in no case to proceed with the different parts of the work without first obtaining from the City some directions and/or drawings as may be necessary for the proper performance of the work.
- (f) If it is found at any time, before or after completion of the work, that the Contractor has varied from the drawings and/or specifications, in materials, quality, form, or finish, or in the amount or value of the materials and labor used, the City shall make a recommendation: (1) that all such improper work should be removed, remade, and replaced, and all work disturbed by these changes be made good at the Contractor's expense; or (2) that the City deduct from any amount due Contractor, the sum of money equivalent to the difference in value between the work performed and that called for by the drawings and specifications. The City, at its option, may pursue either course.

ARTICLE 20. SUBMITTALS.

- (a) Contractor shall check and verify all field measurements and shall submit, with such promptness as to cause no delay in its own work or in that of any other contractor, seven (7) copies checked and approved by Contractor of all shop or setting drawings, schedules, and materials list required for the work of various trades. City Engineer shall review such schedules and drawings only for conformance with design concept of project and compliance with information given in contract documents, and return marked "no exceptions noted" or "rejected" with guidance as to required corrections within ten (10) working days. Contractor shall make any correction required by City Engineer, file four (4) corrected copies with City Engineer, and furnish such other copies as may be needed for construction. City Engineer's approval of such drawings or schedules shall not relieve Contractor from responsibility for deviations from drawings or specifications unless

Contractor has, in writing, called City Engineer's attention to such deviations at time of submission and secured City Engineer's written approval, nor shall it relieve Contractor from responsibility for errors in shop drawings or schedules.

- (b) All submittals of shop drawings, catalog cuts, data sheets, and material lists shall be complete and shall conform to contract drawings and specifications.

ARTICLE 21. LAYOUT AND FIELD ENGINEERING.

All field engineering required for laying out this work and establishing grades for earthwork operations shall be furnished by the Contractor. Such work shall be done by a qualified civil engineer or land surveyor approved by the City. Any required "record" drawings of site development shall be prepared by the registered civil engineer or land surveyor.

ARTICLE 22. TESTS AND INSPECTIONS.

- (a) If City's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, Contractor shall give notice in accordance with such authority of its readiness for observation or inspection at least two (2) working days prior to being tested or covered up. If inspection is by an authority other than City, Contractor shall inform City of date fixed for such inspection. Required certificates of inspection shall be secured by Contractor. Observations by City shall be promptly made and, where practicable, at source of supply. If any work should be covered up without approval or consent of City, it must, if required by City, be uncovered for examination and satisfactorily reconstructed at Contractor's expense in compliance with this Contract. Costs of tests of any materials found to be not in compliance with this contract shall be paid for by contractor. Other costs for tests and inspection of materials shall be paid by City.
- (b) Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency, or City's representative, and not by Contractor.
- (c) Contractor shall notify City, a sufficient time in advance, of manufacture of materials to be supplied by him under contract, which must by terms of contract be tested, in order that City may arrange for testing of same at source of supply. Any materials shipped by Contractor from source of supply prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from said representative that such testing and inspection will not be incorporated in work without prior approval of City and subsequent testing and inspection.
- (d) Re-examination of questioned work may be ordered by City, and if so ordered, work must be uncovered by Contractor. If such work be found in accordance with these contract documents, City shall pay cost of re-examination and replacement. If such work be found not in accordance with these contract documents, Contractor shall pay such costs.
- (e) The City will pay costs for all tests and inspections and shall be reimbursed by the Contractor for such costs under the following conditions:
 - (1) When such costs are stipulated in the provisions of the Contract documents to be borne by the Contractor.
 - (2) When a material is tested or inspected and fails to meet the requirements of the specifications and/or drawings;

- (3) When the source of the material is changed after the original test or inspection has been made and approved.
- (f) If, in the opinion of the City Engineer, subsequent delivery of a tested material seems inferior to or differs from the original said material shall be re-tested upon written order from either the City Engineer, and should the material fail to meet the requirements of the specifications and/or drawings, the Contractor shall pay all costs of such tests, but where the material does pass the requirements, the City will pay the cost.
- (g) All tests and inspections specified for each material shall be made in accordance with the detailed specifications for test or inspections of the material as specified.
- (h) If a material is not required to be tested, the City Engineer, subsequent delivery of a tested material seem inferior to, or differs from, the original, said material shall be re-tested upon written order from either the City Engineer and, should the material fail to meet the requirements of the specification.

ARTICLE 23. TRENCHES

Pursuant to Labor Code Section 6705, if the Contract price exceed \$25,000 and involves the excavation of any trench or trenches five feet or more in depth, the contractor shall, in advance of excavation, submit to the City a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered Civil or Structural Engineer, but in no case shall such plan be less effective than that require by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by City or by the person to whom authority to accept has been delegated by the City.

Pursuant to Labor Code Section 6705, nothing in this article shall impose tort liability upon the City or any of its employees.

ARTICLE 24. DOCUMENTS ON WORK.

Contractor shall keep on the job site at all times one legible copy of all contract documents, including addenda and change order(s), all approved drawings, plans, schedules, and specifications; the current edition of the Uniform Building Code, and all other codes and documents referred to in the specifications and made a part thereof. Said documents shall be kept in good order and made available to all authorities having jurisdiction over the work.

ARTICLE 25. STATE AUDIT.

Pursuant to and in accordance with the provisions of Government Code section 10532, or any amendments thereto, all books, records and files of the City, the Contractor, or any subcontractor connected with the performance of this Contract involving the expenditure of funds in excess of ten thousand dollars (\$10,000), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Officer of the Auditor General of the State of California for a period of three (3) years after final payment is made under this Contract. Contractor shall preserve and cause to be preserved such books, records, and files for the audit period.

ARTICLE 26. SUBSTITUTIONS FOR SPECIFIED ITEMS.

- (a) Whenever in the specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating a description of material, process or article desired and shall be deemed to be followed by the words "or approved equal," and Contractor may, unless otherwise stated, offer any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified. If the material, process, or article offered by Contractor is not, in opinion of City, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified. No substitutes shall be made until approved, in writing, by City. Burden of proof as to equality of any material, process, or article shall rest with Contractor. Contractor shall submit its request together with substantiating data for substitution of an "or equal" item within thirty (30) days after award of Contract. Provision authorizing submission of "or approved equal" jurisdiction of time of performance of this Contract.
- (b) In event Contractor furnishes material, process or article more expensive than that specified, the difference in cost of such material, process, or article so furnished shall be borne by Contractor. Any engineering, design fees, or approval agencies' fee required to make adjustments in material or work of all trades directly or indirectly affected by the approved substituted items shall be borne entirely by Contractor. Any difference in cost between an approved substitution, which is lower in cost than the originally specified material, shall be refunded by Contractor to City.

ARTICLE 27. SAMPLES

- (a) Contractor shall furnish for approval, within thirty (30) days following award of Contract, all samples as required in the specifications, together with any catalogs and supporting data required by City Engineer. This provision shall not authorize any extension of time for performance of this Contract. City Engineer shall review such samples as to conformance with design concept of work and for compliance with information given in contract documents and approve or disapprove same within ten (10) working days from receipt of same.

ARTICLE 28. PROGRESS SCHEDULE

- (a) Within ten (10) days after the notice to proceed, Contractor shall prepare a progress schedule and submit same for City's review. The schedule shall indicate the beginning and completion dates of all phases of construction. The City may disapprove such schedule and require modifications thereto if, in the opinion of the City, adherence to the progress schedule will not cause the work to be completed in accordance with the "Time for Completion" set forth in the Agreement.
- (b) Within ten (10) days after the Contractor has been notified to start work, he shall submit to the City a practicable schedule of operations in bar graph form acceptable to the City. The schedule of operations shall show the order in which the Contractor proposes to carry out the work, the dates on which he will start each major subdivision of the work, and the contemplated dates of completion of such subdivisions.

- (c) If required by the City, the Contractor shall submit supplementary progress schedules on the chart form to indicate approximately the percentage of work scheduled for completion at any time.
- (d) The progress schedule and supplementary progress schedule shall be consistent in all respects with the time requirements of the contract, and shall be subject to review and modification by the City.

ARTICLE 29. MATERIALS AND WORK.

- (a) Except as otherwise specifically stated in this Contract, Contractor shall provide and pay for all materials, labor, tools, equipment, transportation, superintendent, facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.
- (b) Unless otherwise specified, all materials shall be new and shall be of the respective kinds and grades as noted or specified.
- (c) Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work and shall be stored properly and protected as required.
- (d) Contractor shall, after award of Contract by City, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the work. Contractor shall, upon demand from the City, furnish to the City documentary evidence showing that orders have been placed.
- (e) City reserves the right, for any neglect in not complying with the above instruction, to place orders for such materials and/or equipment as it may deem advisable in order that the work may be completed at the date specified in the Agreement, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by the Contractor.
- (f) No material, supplies, or equipment for work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in work and agrees upon completion of all work to deliver premises, together with all improvements and appurtenance constructed or placed thereon by it, to City free for many claims, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by Contract shall have any right to place a lien upon the premise or any improvement or appurtenance thereof, except that Contractor may install metering devices or other equipment of a utility company or political subdivision, title to which is commonly retained by the utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise City as to its owner.
- (g) Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing material or labor under any bond given by contractor for their protection or any rights under any law permitting such persons to look to funds which City otherwise would own to Contractor, and this provisions shall be inserted in all subcontracts and material contracts and notice of its provision shall be given to all persons furnishing material for work when no formal Contract is entered into for such material.
- (h) The title to new materials and/or equipment for the work of this Contract, and attendant liability for its protection and safety, shall remain with Contractor until incorporated in the work of this

Contract and accepted by the City; no part of said materials for immediate installation in the work of this Contract shall be removed from its place of storage, and Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the City or its authorized representative.

ARTICLE 30. INTEGRATION OF WORK.

- (a) Contractor shall do all cutting, fitting, patching, and preparation of work as required to make its several parts come together properly, and fit it to receive or be received by work of other contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure, and shall make good after them as City may direct.
- (b) All cost caused by defective or ill-timed work shall be borne by Contractor.
- (c) Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor save with the review and consent of City.
- (d) Contractor shall be solely responsible for protecting existing work on adjacent properties and shall obtain all required permits for shoring and excavations near property lines.

When modifying existing work or installing new work adjacent to existing, Contractor shall match, as closely as conditions of site and materials will allow, the finishes textures, and colors of the original work, refinishing existing work as required, at no additional cost to City.

ARTICLE 31. OBTAINING OF PERMITS, LICENSES, AND EASEMENTS.

- (a) Permits, licenses, and certificates necessary for prosecution of work shall be secured and paid to City, unless otherwise specified. Contractor shall, and shall require subcontractors to, maintain contractor's licenses in effect as required by law.
- (b) Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by City, unless otherwise specified.

ARTICLE 32. SURVEYS

Surveys to determine location of property lines, right-of-ways; construction staking, grading, and site work, shall be provided by the Contractor and approved by the City Engineer.

ARTICLE 33. EXISTING UTILITY LINES; REMOVAL, RESTORATION.

- (a) Pursuant to Government Code section 4215, the City assumes the responsibility for removal, relocation, and protection of utilities located on the construction site at the time of commencement of construction under this Contract with respect to any such utility facilities which are not identified in the plans and specifications. The Contractor shall not be assessed for liquidated damages for delay in completion of the project caused by failure of the City to provide for removal or relocation of such utility facilities. City shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable

care, and removing or relocating such utility facilities not indicated in the plans and specification with reasonable accuracy, and for equipment necessarily idle during such work.

- (b) This Article shall not be construed to preclude assessment against the Contractor for any other delays in completion of the work. Nothing in this Article shall be deemed to require the City to indicate the presence of existing service lateral or appurtenances whenever the presence of such utilities on the site of the construction project can be inferred from the presence of other visible facilities, such as buildings, meters, junction boxes, manholes, or similar appurtenances on or adjacent to the site of the construction.
- (c) If the Contractor, while performing work under this Contract, discovers utility facilities not identified by the City in the Contract plans or specifications, Contractor shall immediately notify the City and the utility in writing.
- (d) It shall be Contractor's sole responsibility to timely notify all public and private utilities serving the site prior to commencing work. The Contractor shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accordance with Government Code Section 4216.

ARTICLE 34. WORK TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS.

- (a) Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations, bearing on conduct of work as indicated and specified, including but not limited to the appropriate statutes. If Contractor observes that drawings and specifications are at variance therewith, or should Contractor become aware of the development of conditions not covered by contract documents which will result in finished work being at variance therewith, Contractor shall promptly notify City in writing and any changes deemed necessary by the City shall be adjusted as provided in Contract for changes in work.
- (b) If Contractor performs any work which it knew, or through exercise of reasonable care should have known, to be contrary to such laws, ordinances, rules or regulations, and without such notice to City, Contractor shall bear all costs arising therefrom. Where specifications or drawings state that materials, processes, or procedures must be approved by other bodies or agencies Contractor shall be responsible for satisfying requirements of such bodies or agencies.

ARTICLE 35. ACCESS TO WORK.

City and its representatives shall at all times have access to work site whenever the preparation is in progress. Contractor shall provide safe and proper facilities for such access so that City's representative may perform their functions.

ARTICLE 36. UTILITIES.

All utilities, including, but not limited to, electricity, **water**, gas, and telephone used at the work site shall be furnished and paid for by Contractor. Contractor shall furnish and install necessary temporary distribution systems, including **meters**, if necessary, from distribution points to points on site where utility is necessary to carry on the work. Upon completion of work, Contractor shall remove all temporary distribution systems.

ARTICLE 37. CLEANING UP.

Contractor at all times shall keep the premises free from debris such as waste, rubbish, and excess materials and equipment caused by this work. Contractor shall not leave debris under, in, or about the premises, but shall promptly remove same from the premises and dispose of it in a lawful manner. **Disposal receipts or dump tickets shall be furnished to the City upon request.** Upon completion of work, Contractor shall clean interior and exterior of building, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration; Contractor shall clean and polish all glass, plumbing fixtures, remove temporary fencing, barricades, planking, sanitary facilities and similar temporary facilities from site. If Contractor fails to clean up, the City may do so and the cost thereof shall be charged to the Contractor.

ARTICLE 38. PATENTS, ROYALTIES, AND INDEMNITIES.

The Contractor shall hold and save the City and its officers, agents, and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, article, or appliance manufactured or used in the performance of this Contract, including its use by the City, unless otherwise specifically provided in the contract documents, and unless such liability arises from the sole active negligence or willful misconduct of the City.

ARTICLE 39. GUARANTEE.

- (a) In addition to guarantees required elsewhere, Contractor shall, and hereby does, guarantee all work furnished on the job against all defects for a period one (1) year after date of acceptance of work by City and shall repair or replace any and all such work, together with any other work, which may be displaced in so doing that may prove defective in workmanship and/or materials within one (1) year period from date of acceptance without expense whatsoever to City, ordinary wear and tear, unusual abuse or neglect excepted. City will give notice of observed defects to Contractor and Surety with reasonable promptness. Contractor shall notify City upon completion of such repair or replacement.
- (b) In the event of failure of Contractor or Surety to commence and pursue with diligence said replacements or repairs within ten (10) days after being notified in writing, City is hereby authorized to proceed to have defects repaired and made good at expense of Contractor and Surety who hereby agree to pay costs and charges therefor immediately on demand.
- (c) If, in the opinion of the City, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the City or to prevent interruption of operations of City, the City will attempt to give the notice required by this Article. If the Contractor or Surety cannot be contacted or neither complies with the City's request for correction within a reasonable time as determined by the City, the City may, notwithstanding the provisions of this Article, proceed to make such correction or provide such attention and the costs of such correction or attention shall be charged against the Contractor and Surety of the guarantees provided in this Article or elsewhere in this Contract.
- (d) This Article does not in any way limit the guarantees in any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period.

Contractor shall furnish to City all appropriate guarantee or warranty certificates upon completion of the project or upon request by City.

- (e) All guarantees required under this Article shall be in writing on the Guarantee Form included in contract documents.
- (f) Nothing herein shall limit any other rights or remedies available to City.

ARTICLE 40. DUTY TO PROVIDE FIT WORKERS.

- (a) Contractor and subcontractors shall at all times enforce strict discipline and good order amongst their employees and shall not employ on work any person not skilled in the work assigned to such person. It shall be the responsibility of Contractor to insure compliance with this Article.
- (b) Any person in the employ of the Contractor or subcontractors whom City may deem unfit shall be excluded from the work site and shall not again be employed on it except with written consent of City. As used in this subsection, "unit" means any person who the City concludes is either not, or improperly, skilled for the task assigned to that person, who fails to comply with the requirements of this article, or who creates safety hazards which jeopardize other persons and/or property.
- (c) Contractor shall take all reasonable steps necessary to insure that any employees of Contractor or any of its subcontractor's employees do not use, consume, or work under the influence of any alcohol or illegal drugs while on the project. Contractor shall further prevent employees of contractor or any of its subcontractors from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the project. Likewise, Contractor shall preclude any of its employees or subcontractor's employees from bringing any animal onto the project.

ARTICLE 41. WAGE RATES, TRAVEL, AND SUBSISTENCE.

- (a) Pursuant to the provisions of Article 2 (commencing at section 1770), Chapter 1, Part 7, Division 2 of the Labor Code of California, the City has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification or type of worker need to execute this Contract from the Director of the Department of Industrial Relations (hereinafter, in this Article "Director"). These rates are on file with the City of Banning, Engineering Division and copies will be made available to any interested party on request. Contractor shall post a copy of such wage rates at the job site.
- (b) Holidays and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be as defined in the Collective Bargaining Agreement applicable to each particular craft, classification or type of worker employed under the Contract.
- (c) Contractor shall pay, and shall cause to be paid, to each worker engaged in work on the project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the contractor or any subcontractor and such workers.

- (d) Contractor shall pay, and shall cause to be paid, to each worker needed to execute the work on the project travel and subsistence payments, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations in accordance with Labor Code section 1773.8.
- (e) If during the period this bid is required to remain open the director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the work under the Contract is to be performed, such change shall not alter the wage rates in the Notice to Contractors or the Contract subsequently awarded.
- (f) Pursuant to Labor Code section 1775, Contractor shall as a penalty to the City, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each work paid less than the prevailing rates, determined by the Director, for such work or craft in which such worker is employed for any public work done under the Contract by Contractor or by any subcontractor under it. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.
- (g) Any worker employed to perform work on the project, which work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to work to be performed by him, and such minimum wage rate shall be retroactive to time of initial employment of such classification.
- (h) Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provide for in Labor Code section 1777.3.8
- (i) Contractor shall post at appropriate conspicuous points on the site of project, a schedule showing all determined minimum wage rates and all authorized deduction, if any, from unpaid wages actually earned.

ARTICLE 42. HOURS OF WORK.

- (a) As provided in article 3, (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the work or upon any part of the work contemplated by this Contract shall be limited and restricted by the Contractor to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provide. Notwithstanding the provisions hereinabove set forth, work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.
- (b) Pursuant to Labor Code section 1813, the Contractor shall pay to the City a penalty of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code.

- (c) Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to City unless otherwise agreed to in writing before the work in question is commenced pursuant to Article 52, Changes and Extra Work.

ARTICLE 43. PAYROLL RECORDS.

- (a) Pursuant to the provision of section 1776 of the Labor Code, the Contractor shall keep and shall cause each subcontractor performing any portion of the work under this Contract to keep, an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee by Contractor in connection with the work. All payrolls shall appear on Department of Labor Form WH-347.
- (b) The payroll records enumerated under subdivision (a) shall be certified, shall be submitted on a weekly basis by the contractor and the sub-contractor and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - (1) A certified copy of any employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 - (2) **A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the City, the Division of Labor Standards Enforcement, and the Division of Industrial Relations.**
 - (3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or copies thereof made; provide, however, that a request by the public shall be made throughout either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the Contractor.
 - (4) The form of certification shall be as follows:

I, _____ (Print Name), the undersigned, am _____
(position in business) with the authority to act for and on behalf of _____

(Name of business and/or Contractor). I certify under penalty of perjury that the records or copies submitted herein and consisting of (description, number of pages) are the originals or true, full and correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of cash, check, or whatever from to the individual or individuals named.

Date: _____ Signature: _____

- (c) **Each contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.**
- (d) Any copy of records made available for inspection copies and furnished upon request to the public or any public agency by the City, the division of Apprenticeship Standard, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent

disclosure of an individual's name, address, and social security number. The name and address of the Contractor awarded the contract or performing the contract shall not be marked or obliterated.

- (e) The Contractor shall inform the City of the location of records enumerated under subdivision (a), including the street address, city and county, and shall within five (5) working days, provide a notice of a change of location and address.
- (f) In the event of noncompliance with the requirements of this section, the Contractor shall have ten (10) days in which to comply, subsequent to receipt of written notice, specifying in what respects the Contractor must comply with this section. Should noncompliance still be evident after the 10-day period, the Contractor shall, as a penalty to the city, forfeit twenty-five dollars (\$25.00) for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.
- (g) **It shall be the responsibility of the Contractor to insure compliance with the provisions of this Article and the provisions of Labor Code section 1776.**

ARTICLE 44. APPRENTICES.

- (a) The Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, this Contract is governed by the provisions of Labor Code section 1777.5. It shall be the responsibility of the Contractor to insure compliance with this article and with Labor Code section 1777.5 for all apprenticeship occupations.
- (b) Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.
- (c) Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he is employed, and shall be employed only at the work of the craft or trade to which he is registered.
- (d) Only apprentices, as defined in section 3077, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3 of the Labor Code, are eligible to be employed. The employment and training of each apprenticeship shall be in accordance with the provisions of the apprenticeship standards and apprentice agreement under which he is training.
- (e) Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, the Contractor and any subcontractors employing workers in any apprenticeship craft or trade in performing any work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or subcontractor under the applicable apprenticeship standards and fixing the ration of apprentices to journeymen employed in performing the work.
- (f) Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, the Contractor and any subcontractor may be required to make contributions to the apprenticeship program.
- (g) If the Contractor or subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator or Apprenticeship, it shall:

- (1) Be denied the right to bid on any subsequent project for one year from the date of such determination;
 - (2) Forfeit as a penalty to the City fifty dollars (\$50.00) per day for each calendar day of noncompliance, which shall be withheld from any payment due or to become due under the terms of this Contract. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council.
- (h) The Contractor and all subcontractor shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.
 - (i) Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the work. Special attention is directed to section 1777.5, 1777.6, and 1777.7 of the Labor Code, and Title 8, California Administrative Code, section 200 et seq. Questions may be directed to the **State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California.**

ARTICLE 45. LABOR - FIRST AID.

The contractor shall maintain emergency first aid treatment for Contractor's workers on the project which complies with current Occupational Safety and Health regulations.

ARTICLE 46. PROTECTION OF PERSONS AND PROPERTY.

- (a) The Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and work performed until the effective date of City Council approval of the Notice of completion. All work shall be solely at the Contractor's risk, with the exception of damage to the work cause by "acts of God" as defined in Government Code section 4151 (b). Contractor liability for any injury or damage proximately cause by any "act of God" shall be limited to five percent (5%) of the Contract price pursuant to Government Code section 4150.
- (b) Contractor shall take, and require subcontractor to take, all necessary precaution for safety of worker on the work and shall comply with all applicable federal, state, local and other safety laws, standards, orders, ruled, regulations, and building codes to prevent accident or injury to persons on, about, or adjacent to premises where work is being performed and to provide a safe and healthful place of employment. In addition to meeting all requirement of OSHA, Cal-OSHA, state, and local codes, Contractor shall furnish, erect and properly maintain at all times, as directed by City or required by conditions and progress of work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and nets, barriers, lights, and watchmen for protection of workers an the public and shall post danger signs warning against hazard created by such features in the course of construction. Contractor shall designate a responsible member of its organization on the work, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety requirements, and to protect the life, safety and health of workers. Name and position of person so designated shall be reported to the City by the Contractor. Contractor shall correct any violations of safety laws, rules, orders, standards, or

regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, such violation shall be corrected promptly.

- (c) In an emergency affecting safety of life, of work, or of adjoining property, Contractor, without special instruction or authorization from City, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and Contractor shall so act if so authorized or instructed by City. City will not hold Contractor liable for damages proximately caused by Contractor's actions if such actions were reasonably necessary to prevent loss of life or injury to person or damage to work or adjoining property. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- (d) Contractor shall provide such heat, covering and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.
- (e) Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs pavements, utilities, adjoining property and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations. All permits, licenses, or inspection fees required for such repair work shall be obtained and paid for by Contractor.
- (f) Contractor shall (unless waived by the City in writing):
 - (1) When performing new construction on existing sites, become informed and take into specific account work which may interfere with school routine before or after school hours, enclose working area with a substantial barricade, and arrange work to cause a minimum amount of inconvenience and danger to students and faculty in their regular school activities. The Contractor shall comply with specifications and directives of the City regarding the timing of certain construction activities in order to avoid unnecessary interference with school functioning.
 - (2) Provide substantial barricade around any shrubs or trees indicated to be preserved.
 - (3) Deliver material to building area over route designated by City.
 - (4) Take preventive measures to eliminate objectionable dust.
 - (5) Confine apparatus, the storage of materials, and the operations of workers to limits indicted by law, ordinances, permits or directions of City; and shall not interfere with the work or unreasonably encumber premises or overload any structure with materials; and enforce all instructions of City regarding signs, advertising, fires, and smoking and require that all workers comply with all regulations while on construction site.
 - (6) Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved land surveyor or civil engineer and all maps and records required therefrom shall be filed with county and local authorities, at no cost to the City. All filing and plan check fees shall be paid by Contractor.

ARTICLE 47. NONDISCRIMINATION.

In the performance of the terms of this Contract, Contractor agrees that it will not engage in nor permit such subcontractor as it may employ to engage in unlawful discrimination in employment of persons

because of the race, religious creed, color, national origin, ancestry, physical handicap, medical conditions, marital status, or sex of such person.

ARTICLE 48. COST BREAKDOWN AND PERIODICAL ESTIMATES.

- (a) Contractor shall furnish on forms approved by Engineer.
 - (1) Within fifteen (15) calendar days of award of this Contract, a detailed estimate giving complete breakdown of Contract price for such project or site; and
 - (2) A periodical itemized estimate of work done for purpose of making partial payments thereon.
 - (3) Within fifteen (15) calendar days of request of due City, a schedule of estimated monthly payments which shall be due Contractor under the Contract.

Values employed in making up any of these schedules will be used only for determining basis of partial payment and will not be considered as fixing a basis for additions to or deductions from Contract price.

ARTICLE 49. CONTRACTOR CLAIMS.

If the Contractor shall claim compensation for any damage sustained by reason of the acts of the City or its agents, Contractor shall, within five (5) days after sustaining of such damage, make to the City Engineer a written statement of the damage sustained. On or before the 15th day of the month succeeding that in which such damage shall have been sustained, the Contractor shall file with the City an itemized statement of the details and amount of such damage in accordance with Article 58, and unless such statement shall be made as required, Contractor's claims for compensation shall be forfeited and invalidated and it shall not be entitled to considerations for payment on account of any such damage.

ARTICLE 50. DISPUTES.

- (a) In the event of a dispute between the parties as to performance of the work or the interpretation of the Contract, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, Contractor agrees to continue the work diligently to completion. There shall be at least one meeting between the parties regarding the issues before commencement of legal action. If the dispute is not resolved, Contractor agrees it will neither rescind the Contract nor stop the progress of the work, but Contractor's sole remedy shall be to submit such controversy to determination by a court of the State of California, in Riverside county, having competent jurisdiction of the dispute, after the Project has been completed, and not before.

ARTICLE 51. PAYMENTS.

- (a) Unless otherwise specified, each month within thirty (30) days after receipt of an approved periodical estimate for partial payment, there shall be paid to Contractor a sum equal to ninety percent (90%) of the value of the work performed and no payment shall be made for the material

delivered or stocks which is not installed and approved by the City Inspector, less aggregate previous payments. Monthly payments shall be made only on the basis of monthly estimates which shall be prepared by Contractor on a form approved by City and filed before the fifth day of the calendar month. The monthly estimate shall be submitted to the City Engineer, for his written approval or disapproval prior to submission to the City. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release Contractor or Surety from any damages arising from such work or from enforcing each and every provision of this Contract, and City shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimated processed or be entitled to have any payment for work performed so long as any lawful or proper direction concerning work, or any portion thereof, given by the City shall remain uncomplished with.

- (b) Before payment is made hereunder, a certificate in writing shall be obtained from the City stating that the work for which the payment is demanded has been performed in accordance with the terms of the Contract and that the amount stated in the certificate is due under the terms of the Contract. Such certificate shall be attached to and made a part of the claim made and filed with the City, provided that if the City shall, within three (3) days after written demand therefor, fail to deliver such certificate to the City, the Contractor may file its claim with the City without said certificate, but together with such claim shall be filed a statement that demand was made for such certificate and that the same was refused. Thereupon, the City will either allow said claim as presented or shall, by an order entered on the minutes of said City, state the reasons for refusing to allow said claim. It is understood, moreover, that the certificates shall not be conclusive upon the City, but advisory merely.
- (c) The City shall have right to withhold payment under this Article for the following additional reasons:
 - (1) Failure to file required reports for work through the end to the previous calendar month;
 - (2) Failure to update as-built drawings for work through the end of the previous calendar month;
 - (3) Failure to submit certified payrolls for work ending by the beginning of the previous calendar month; and,
 - (4) Failure to submit an update progress schedule during the previous calendar month.
- (d) No payment by City hereunder shall be interpreted so as to imply that City has inspected, approved, or accepted any part of the work. The final payment of ten percent (10%) of the value of the work done under this Contract, if unencumbered, shall be made thirty-five (35) days after recording by the City of the Notice of Completion. Acceptance will be made only by action of the City Council of City.

Unless otherwise provided, on or before making request for final payment of the undisputed, amount due under the Contract, contractor shall submit to City, in writing, all claims for compensation under or arising out of this contract. As a condition of final payment, the Contractor shall execute a release on a form approved by the City, in favor of the City, which shall release and discharged all claims which the Contractor has, claims to have, or which may be discovered in the future, except those identified by Contractor in writing on the form of release as unsettled.

ARTICLE 52. CHANGES AND EXTRA WORK.

- (a) City may, as provided by law and without affecting the validity of this Contract, order changes, modifications, deletions and extra work by issuance of written change order from time to time during the progress of the Project, Contract sum being adjusted accordingly. All such work shall be executed under conditions of original Contract except that any claim for an extension of time caused thereby shall be adjusted at time of ordering such change.
- (b) In giving instruction, City shall have authority to make minor changes in work, not involving change in cost, and not inconsistent with purposes of building. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order from City, authorized by the City Engineer and/or by action of its City Council, and no claim for addition to Contract sum shall be valid unless so ordered.
- (c) Value of any such extra work, change, or deduction shall be determined at the discretion of City in one or more of the following ways:
 - (1) By acceptable lump sum proposal from Contractor; or
 - (2) By unit prices contained in Contractor's original bid and incorporated in contract documents or fixed by subsequent agreement between City and Contractor; or
 - (3) By cost of material and labor and percentage for overhead and profit. The following form shall be used as applicable by the City and Contractor to communicate proposed additions and deductions to Contract.

| | EXTRA | CREDIT |
|---|--------------|---------------|
| a. Material (attached itemized quantity and unit cost plus sales tax) | _____ | _____ |
| b. Labor (attached itemized hours and rates) | _____ | _____ |
| c. P.L. and P.D., Workers; Compensation Insurance, Social Security, and Unemployment Taxes, not to exceed 15% of Item b | _____ | _____ |
| d. Subtotal | _____ | _____ |
| e. Subcontractor's overhead and profit, not to exceed 10% of Item d | _____ | _____ |
| f. Subtotal | _____ | _____ |
| g. General Contractor's Overhead and | | |

- | | | | |
|----|---|-------|-------|
| | Profit, not to exceed 15% of Item f | _____ | _____ |
| h. | Subtotal | _____ | _____ |
| i. | Bond Premium, not to exceed 1% of Item h | _____ | _____ |
| j. | Total | _____ | _____ |
- (d) The overhead markup in subparagraph (c) above include all indirect, general, administrative, and unabsorbed overhead expenses. Contractor will be allowed the full amount of its labor burden and bond premium that it provides satisfactory proof of, up to, but not exceeding, the limits contained in subparagraph (c) above.
- (e) If the Contractor should claim that any instruction, request, drawing, specifications, action, condition, omission, default, or other situation obligates the City to pay additional compensation to the Contractor or to grant an extension of time for the compensation of the Contract, or constitutes a waiver of any provision in the Contract, Contractor shall notify the City, in writing, of such claim within ten (10) day period shall be deemed a waiver and relinquishment of such a claim against the City. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this article.

ARTICLE 53. COMPLETION.

- (a) The City shall accept completion of the Contract and have the Notice of Completion recorded when the entire work shall have been completed to the satisfaction of the City.
- (b) However, the City, at its sole option, may accept completion of the Contract and have the Notice of Completion recorded when the entire work shall have been completed to the satisfaction of the City, except for minor corrective items, as distinguished from incomplete items.
- (c) If the Contractor fails to complete the minor corrective items prior to the expiration of the thirty-five (35) days period immediately following acceptance of completion, the City shall withhold from the final payment and amount equal to twice the estimated cost, as determined by the City, of each item until such time as the item is completed. Such cost shall include any additional architectural/engineering costs and administrative burden.
- (d) At the end of such 35-day period, if there are items remaining to be corrected, the City may elect to proceed as provided in the Article entitled "Adjustments to Contract Price."
- (e) The work may only be accepted as complete by action of the City Council.

ARTICLE 54. ADJUSTMENTS OF CONTRACT PRICE.

- (a) If Contractor defaults or neglects to carry out the work in accordance with the contract documents or fails to perform any provision thereof, City may, after ten (10) days written notice

to the Contractor and without prejudice to any other remedy it may have, make good such deficiencies.

- (b) The City shall adjust the total Contract price by reducing the amount thereof by the cost of making good such deficiencies. If City deems it inexpedient to correct work injured or not done in accordance with Contract provisions, and equitable reduction in the Contract price shall be made thereof.

ARTICLE 55. CORRECTION OF WORK.

- (a) Contractor shall promptly remove from premises all work identified by City as failing to conform to Contract whether incorporated or not. Contractor shall promptly replace and re-execute its own work to comply with contract documents without additional expense to City and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
- (b) If Contractor does not remove such work within a reasonable time, fixed by written notice, City may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) days time thereafter, City may, upon ten (10) days written notice, sell such material at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

ARTICLE 56. EXTENSION OF TIME - LIQUIDATED DAMAGES.

- (a) Contractor shall be assessed the sum set forth in the Supplementary Conditions as liquidated damages for each and every day the work required under this contract remains unfinished past the time for completion, as set forth in the Agreement, and any extensions of time granted by the City to the Contractor under the terms of the contract documents. **THE CONTRACTOR AND CITY HEREBY AGREE THAT THE EXACT AMOUNT OF DAMAGES FOR FAILURE TO COMPLETE THE WORK WITHIN THE TIME SPECIFIED IS EXTREMELY DIFFICULT OR IMPOSSIBLE TO DETERMINE. THE PARTIES AGREE THAT THE AMOUNT SET FORTH IN THE SUPPLEMENTAL GENERAL CONDITIONS REPRESENTS A FAIR AND REASONABLE SUBSTITUTE FOR THOSE DAMAGES.** For purposes of this Article, the work shall be considered "complete" in accordance with the provisions of Article 53, Completion.
- (b) Contractor shall not be charged for liquidated damages, as set forth above, because of any delays in completion of work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not restricted to: acts of God, acts of public enemy, acts of Government, acts of City or any one employed by it or acts of another contractor in performance of a contract (other than this Contract) with City, fires, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather or delays of subcontractor due to such causes. "Unusually severe weather" shall be defined as that which exceeds the normal seasonally expected averages. Contractor shall, within ten (10) days of beginning of any such delay (unless City grants in writing a further period of time to file such notice prior to date of final settlement of the Contract), notify City in writing of causes of delay; thereupon City shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the finding of fact justify such an extension. The City's finding of fact thereon shall be final and conclusive on the parties hereto.

ARTICLE 57. PAYMENTS WITHHELD.

- (a) In addition to amount which City may retain under the Article entitle "Completion" and Article entitle "Payments," City may withhold a sufficient amount (up to 125%) or amounts of any payment or payments otherwise due to Contractor, as in its judgment may be necessary to cover:
- (1) Payments which may be past due and payable for just claims against Contractor or any subcontractors, or against and about the performance of work on the project under this Contract, including, without limitation, payments made pursuant to the article entitled "Payments By Contractor;"
 - (2) The cost of defective work which Contractor has not remedied;
 - (3) Liquidated damages assessed against Contractor;
 - (4) Penalties for violation of labor laws;
 - (5) The cost of materials ordered by the City pursuant to the Article entitled "Materials";
 - (6) The cost of completion of this Contract if there exists a reasonable doubt that this Contract can be completed for the balance then unpaid to Contractor;
 - (7) Site clean up as provided in Article entitled "Cleaning Up."
- (b) If the Contractor, at its own expense, removes, the reason for withholding, then payment shall be made for amounts withheld.
- (c) City may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, City shall make such payments on behalf of Contractor. If any payment is so made by City, then such amount shall be considered as payment made under Contract by City to Contractor and City shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations.. City will render Contractor an accounting of such funds disbursed on behalf of Contractor.
- (d) As an alternative to payment of such claims or obligations, City, in its sole discretion, may reduce the total Contract price as provided in the Article entitled "Adjustments to Contract Price."

ARTICLE 58. EXCISE TAXES.

If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the City, upon request, will execute documents necessary to show same.

ARTICLE 59. NO ASSIGNMENT.

Contractor shall not assign this Contract or any part thereof without the prior written consent of City. Assignment without such prior written consent shall be null and void. Any assignment of money due or

to become due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of work called for under said Contract in favor of all persons, firms or corporations rendering such service or supplying such materials to the extent that claims are filed pursuant to the Civil Procedure and shall also be subject to deductions for liquidated damages or withholding of payments a determined by the City in accordance with this Contract.

ARTICLE 60. NOTICE AND SERVICE THEREOF.

Any notice form one party to the other or otherwise under the Contract shall be in writing and shall be dated and signed by the party, or its duly authorized representative, giving such notice. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

- (1) If notice is given to City, by personal delivery thereof to City or by depositing same in United States mails, enclosed in a sealed envelope addressed to City, and sent by registered or certified mail with postage prepaid;
- (2) If notice is given to Contractor, by personal delivery thereof to said Contractor or to Contractor's superintendent at site of project, or by depositing same in United States mail, enclosed in a sealed envelope addressed to said Contractor at its regular place of business or at such address as may have been established for the conduct of work under this Contract, and sent by registered or certified mail with postage prepaid;
- (3) If notice is given to Surety or other person, by personal delivery or by depositing same in United States mails, enclosed in a sealed envelope, sent by registered or certified mail with postage prepaid.

ARTICLE 61. NO WAIVER

The failure of the City in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option any future occasion.

ARTICLE 62. OWNER'S RIGHT TO CARRY OUT THE WORK.

If Contractor defaults or neglects to carry out the work in accordance with the contract documents or fails to perform any provision of this Contract, the City may, after ten (10) days' written notice to Contractor and without prejudice to any other remedy he may have, made good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due Contractor the cost of correction such deficiencies, including the cost of any additional service made necessary by such default, neglect or failure. If the payments then or thereafter due Contractor are not sufficient to cover such amount, then Contractor shall pay the difference to the City within ten (10) days.

ARTICLE 63. INDEMNIFICATION.

The work shall be performed entirely at Contractor's risk and Contractor shall defend, indemnify and hold harmless the City or the County of Riverside and its elected officials, officers, agents, servants, representatives and employees from and against all loss, including loss of use, liability damage, claims demands, actions and proceedings, and all costs and expense connected therewith, including reasonable attorney's fee, of whatsoever cause of nature on account of any damage to or loss or destruction of any property, including employees of City, or injury to or death of any person, including employees of City, caused in whole or in part by any negligent act or omission of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is cause in part by a party indemnified under the Contract. Contractor shall also defend, indemnify and hold City harmless from and against all claims and liens of all persons based upon the furnishing of labor and materials in connection with the performance of the work.

ARTICLE 64. HAZARDOUS MATERIALS.

In the event the Contractor encounter on the site material which it reasonable believes to be "hazardous material," as that term is defined by federal and state law, which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the City in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the City and Contractor if in fact the material is a "hazardous material," or when it has or been rendered, by written agreement of the City and Contractor, or in accordance with any federal or state agency having cognizance of the matter.

ARTICLE 65. MATERIAL SAFETY DATA SHEETS AND COMPLIANCE WITH PROPOSITION 65.

- (a) Contractor is required to insure that material safety data sheets are available in a readily accessible place at the work site, for any material requiring a material safety data sheet per the federal "hazard communication" standard, or employees' right-to-know law. The contractor is also required to insure proper labeling on any substance brought into the job site, and that any person working with the material, or within the general area of the material, is informed of the hazards of the substance and follows proper handling and protection procedures.
- (b) Contractor is required to comply with the provision of California Health and Safety Code section 25249, et seq., which requires the posting and giving of notice to persons who may be exposed to any chemical know to the State of California to cause cancer. The Contractor agrees to familiarize itself with the provisions of this section , and to comply fully with its requirements.

ARTICLE 66. NON-UTILIZATION OF ASBESTOS MATERIAL.

- (a) NO ASBESTOS OR ASBESTOS-CONTAINING PRODUCTS SHALL BE USED IN THIS CONSTRUCTION OR IN ANY TOOLS, DEVICES, CLOTHING, OR EQUIPMENT USED TO EFFECT THIS CONSTRUCTION.

Asbestos and/or asbestos-containing products shall be defined as all items containing, but not limited to, chrysotile, amosite, anthophyllite, tremolite, and antinolite.

Any or all material containing greater than one-tent of one percent (>.1%) asbestos shall be defined as asbestos-containing material.

All work or materials found to contain asbestos or work or material installed with asbestos-containing equipment will be immediately rejected and this work will be removed at no additional cost to the City.

- (b) Decontamination and removal of work found to contain asbestos or work installed with asbestos-containing equipment shall be done only under supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency.

The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant, who shall have sole discretion and final determination in this matter.

The asbestos consultant shall be chosen and approved by the City, who shall have sole discretion and final determination in this matter.

The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

- (c) Interface of work under this contract with work containing asbestos shall be executed by the Contractor at his risk and at his discretion, with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos-containing products. By execution of this Contract, the Contractor acknowledges the above and agrees to hold harmless City and its assigns for all asbestos liability which may be associated with the is work and agrees to instruct his employees with respect to the above-mentioned standards, hazards, risks and liabilities.

ARTICLE 67. RECORDS RETENTION AND INSPECTION.

The Contractor and subcontractor(s) shall allow authorized Federal, State, County and/or City officials access to the work area, fiscal, payroll, materials, and other relevant contract records. All relevant records must be retained for at least three years.

SECTION III - SUPPLEMENTAL GENERAL CONDITIONS

A. Specifications

The performance of the Contract, all materials supplied and all work performed shall be in accordance with the Standard Specifications for Public Works Construction ("Green Book") current edition, including supplements excepted as otherwise noted in this contract or on the project plans.

B. Contractor's Representative

The contractor's attention is directed to Section 7-6 of the Standard Specifications for Public Works Construction, the Contractor's Representative. Prior to the commencement of work, the Contractor shall submit in writing the name of his designated representative and alternate, if any. Failure of the Contractor's representative, or his alternate, to be present at the job site while construction is proceeding shall constitute suspension of the Contract and all work performed in the absence of the Contractor's representative, or alternate, is subject to rejection.

C. Activities/Submittals Required in Writing Prior to Commencement of Work

Prior to commencement of work on this project, the Contractor is required to execute the Agreement and submit all documents required by the Contract including, but not limited to:

1. Designation of Contractor's representative.
2. Construction schedule (bar graph form).
3. Certificates of Insurance.
4. Securities for performance and for labor and materials.
5. Traffic control plan. (If required)
6. State Division of Industrial Safety trenching permit number (if applicable)
7. Underground Service Alert ticket number.
8. Certificate of Compliance or Certificate of Exemption from State of California Joint Apprenticeship Committee.
9. Photocopies of business licenses for contractor and all subcontractors.

Additionally, Contractor must obtain all permits, pay all required fees, and schedule and attend the required preconstruction meetings.

The City will issue a Notice to Proceed after the above requirements have been met.

D. Construction Schedule

The Contractor shall submit to the Engineer for approval its proposed construction schedule consistent in all respects with the time and order of work requirements of this Contract. Said schedule shall be in BAR GRAPH FORM and shall be sufficient detail to show the chronological relationship of all construction activities.

The proposed construction schedule shall be submitted within seven (7) calendar days prior to the Preconstruction Meeting. The Engineer shall approve, conditionally approve, or disapprove the Contractor's proposed construction schedule within seven (7) calendar days of receipt thereof.

E. Pre-construction Meeting

Prior to commencing work, THE CONTRACTOR SHALL ATTEND A PRECONSTRUCTION MEETING with the Electric Utility Department, Public Works Department/Engineering Division, other interested utility companies, and other agencies that will be affected by this project. Project coordination, timing, and compliance with Federal regulations and Labor Standards will be discussed at the meeting.

F. Permits and Inspection Fee

Attention is directed to Section 7-5, Permits, of the Standard Specifications for Public Works Construction and to the following Special Provisions.

The Contractor and Subcontractors are required to obtain a City business license and pay all applicable fees. In addition, the Contractor shall obtain a "No Fee" Public Works Permit; however he shall pay the issuance fee.

| <u>Permits</u> | <u>Fees</u> |
|---------------------|---|
| Public Works Permit | Issuance Fee (\$23.00) |
| Business License | Contractor to contact the City Business License Office at (951) 922-3126 for fees |

G. Contractor Submittals

Contractor submittals to the City shall be delivered to CITY OF BANNING, ELECTRIC UTILITY DEPARTMENT, AND LABELED, **PROJECT NO. 2014-04EL, "DEMOLITION OF BUILDING LOCATED AT 215 EAST BARBOUR STREET."** For submittals requiring an action/approval, the City will respond within seven (7) calendar days of receipt of said submittal.

H. Potholing Requirements

The Contractor shall uncover and verify the location of utilities indicated to be within the limits of construction before excavation for improvements.

I. Disposal of Debris

All non-salvageable debris resulting from removals on this project shall be disposed of off-site at a legal site at the Contractor's expense. Pursuant to Subsection 300-2.6 of the Standard Specifications for Public Works Construction, the Contractor shall, upon request, file with the Engineer the written consent of the property owner of the property on which he intends to dispose of such material. If asbestos material is present, the Contractor shall contact the *South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731, (818) 572-6200*, for appropriate application and permit prior to removal and disposal.

J. Protection and Restoration of Existing Improvements

The Contractor shall be responsible for the protection of property and all improvements adjacent to the work, and shall restore the entire work area to its original condition after completion of the work. **The requirements of Section 7-9 of the Standard Specifications for Public Works Construction shall apply. Restoration and protection shall apply to all walls, irrigation systems, fences, PCC and AC paving and slabs, and all other types of improvements, except as otherwise provided in these Special Provisions.** The costs to the Contractor for protecting, removing and restoring existing improvements to the satisfaction of the Engineer shall be included in the bid. All survey monuments and ties shall be protected in place. Contractor shall notify the City if any survey monuments or ties are disturbed or destroyed.

K. State of California Safety Requirements

The Contractor's attention is directed to the Standard Specifications for Public Works Construction, Subsection 7-10.4.1, Safety Orders, and Subsection 306.1.1.6, Bracing Excavations, relative to the safety and protection of workers and excavations. As provided in said Subsection 7-10.4.1, payment for all work necessary to provide safety measures shall be included in the prices bid for other items of work. The Contractor shall submit to the City his State of Division of Industrial Safety Trenching Permit number.

L. Open Trench Operations

The maximum length of trench excavation shall be as prescribed in Subsection 306-1.1.2 of the Standard Specifications for Public Works Construction, except that at the end of each working day all trenches shall be backfilled. Temporary asphalt, two (2)-inch minimum shall be placed on trench where traffic is to have access.

Contractor's request for exceptions to the above requirements must be submitted in writing to the Engineer within two (2) working days.

M. Liquidated Damages

The City and Contractor hereby agree that in case all construction called for under the contract is not completed per contract allowed for completion, as extended by delays by the City, damages

will be sustained by the City and that, it is and will be impracticable or extremely difficult to ascertain and determine the actual damages the city will sustain in the event of, and by reason of, such delay.

It is, therefore, agreed that such damages shall be presumed to be in the amount of **\$300.00** per calendar day, and that the contractor will pay to the City, or City may retain from amounts otherwise payable to contractor, said amount for each day after failure to meet the requirements of the contract completion schedule herein.

N. Definition of Proposal Items

Final Pay Quantities for Unit Basis Items of Work

All items of work which are not designated on the Bid Schedule by the letters LS, or words Lump Sum, shall have final pay quantities measured and paid for in accordance with the Standard Specifications for Public Works Construction and Special Provisions.

Progress Payments for Lump Sum Items of Work

The word Complete in the Estimated Quantities column of the bid Schedule for a lump sum item of work shall mean that payment for that item (Estimated Quantities Column) of the work will only be made after all work for that item has been completed. The percent (%) symbol in the Bid Schedule for a lump sum item of work shall mean that progress payments for that item will be allowed.

Final Pay Quantities for Lump Sum Items of Work

When the estimated quantity for an item of work is designated on the Bid Schedule by the letters LS or the words Lump Sum, said estimated quantity shall be the final quantity for which payment for said item of work will be made, unless the dimensions of said work, as shown on the plans, are revised by the Engineer. If such dimensions are revised, and such revisions result in an increase or decrease in the quantity of such work, the final payment for said lump sum item will be revised in proportion to the change in quantities and authorized by Contract Change Order. The estimated quantity for a lump sum item of work shall be considered as approximate only, and no guarantee is made that the actual final quantity will equal the estimated quantity. No allowance will be made in the event that the actual final quantity does not equal the estimated quantity except as noted hereinabove.

The unit prices or lump sum prices to be paid for the item listed in the proposal shall include full compensation for furnishing all labor, materials, tools and equipment and doing all work involved in furnishing and installing the materials, complete and in place, in accordance with details shown on the plans and as specified herein. Any items shown on the plans, but not included in the bid items, shall be considered as appurtenance items. All costs shall be included within the appropriate item of the Contractor's bid.

O. Measurement and Payment

General

Replace the first sentence of the FIRST paragraph of Subsection 9-3 of the Standard Specifications for Public Works Construction with the following:

“For unit basis items of work, the estimated quantities listed on the Bid Schedule will not govern the final payment.”

Add to the NINTH paragraph of Subsection 9-3.1 of the Standard Specifications the following:

“In the event that one or more Stop Notices are filed with the City, an amount equal to One-Hundred and twenty-five Percent (125%) of the total amount(s) will be withheld from payment to contractor in accordance with applicable laws.”

Partial and Final Payment

Replace the FIRST, SECOND, and THIRD paragraphs of Subsection 9-3.2 of the Standard Specifications with the following:

“Except as otherwise provided for L.S. items, the Contractor will be entitled to no more than one progress payment per month. Twenty-one (21) days prior and prerequisite to each progress payment, the Contractor shall submit to the Engineer a detail estimate and invoice for his estimate of the total quantity and value of work completed since the cutoff date for the previous progress payment. The Engineer will make the final determination as to the actual quantity and value of work completed for which payment will be made. Ten percent (10%) will be deducted from each progress payment and retained by the City until later released as specified hereinafter.

“Before he shall be entitled to final payment of the retention withheld from the progress payments, the Contractor shall execute and file with the City a release on a form which complies with Section 3262 of the Civil Code and which is acceptable to the City, releasing the City from all claims or liability relating to undisputed contract amounts for work performed in relation to said amounts.

“The final payment of the retention withheld from the progress payment shall not be due and payable until the expiration of at least thirty-five (35) calendar days from the date of recording of the Notice of Completion by the County Recorder.”

Delivered Materials

Replace Subsection 9-3.3 of the Standard Specifications with the following Special Provisions:

“Unless a bid item is included in the Bid Schedule and/or unless otherwise called for in these Special Provisions, no payment will be made for materials and/or equipment delivered but not yet incorporated in the work.”

P. Contractor's Equipment

GENERAL – It shall be the Contractor's responsibility to provide equipment that is adequate for the performance of the work under this contract within the time specified. All equipment shall be kept in satisfactory operative condition, shall be capable of safely and efficiently performing

the required work, and shall be subject to inspection and approval by the Owner's representative at any time within the duration of the contract. All work hereunder shall conform to the applicable requirements of Cal-OSHA and OSHA Standards for Construction.

SEPARATE CONTRACTS – Whenever portions of the work hereunder are let under separate contracts, all of the provisions of the Section shall apply to each such prime contractor.

CONSTRUCTION LIGHTING – All work conducted at night or under conditions of deficient daylight shall be suitably lighted to insure proper work and to afford adequate facilities for inspection and safe working conditions.

CONSTRUCTION WIRING – All wiring for temporary electric light and power shall be installed and maintained in first class manner and shall be securely fastened in place. All electrical facilities shall conform to the requirements of Title 8, Industrial Relations, Subchapter 5, Electrical Safety Orders, California Administrative Code; and Subpart K of the OSHA Safety and Health Standards for Construction.

SEPARATION OF CIRCUITS – Unless otherwise permitted by the Engineer, circuits separate from lighting circuits shall be used for all power purposes.

FIRE PROTECTION – The construction plant and all other parts of the work shall be connected with the Contractor's water supply system and shall be adequately protected against damage by fire. Hose connections and hose, water casks, chemical equipment, or other sufficient means shall be provided for fighting fires in the temporary structures and other portions of the work, and responsible persons shall be designated and instructed in the operations of such fire apparatus so as to prevent or minimize the hazard of fire. The Contractor's fire protection program shall conform to the requirements of Article 34, Section 1805, b of Cal-OSHA, and subpart F of the OSHA Standards for Construction.

Q. Utilities

WATER SUPPLY – Water for construction purposes will be furnished on site by the Contractor, and the Contractor shall make all necessary provisions for conveying the water from the Owner-designated source to the points of use. **The Contractor shall pay the City (Owner) for use of the water as measured by a City installed construction water meter.**

WATER CONNECTIONS – The Contractor shall not make connection to, or draw water from, any fire hydrant or pipeline without first obtaining permission of the authority having jurisdiction over the use of said fire hydrant or pipeline and from the agency owning the affected water

system. For each such connection made, the Contractor shall first attach to the fire hydrant or pipeline a valve and a meter of a size and type acceptable to said authority and agency.

REMOVAL OF WATER CONNECTIONS – Before final acceptance of the work on the project, all temporary connections and piping installed by the Contractor shall be entirely removed, and all improvements shall be restored to their original condition, or better, to the satisfaction of the Engineer and to the agency owning the affected utility.

POWER – Reasonable power for execution of the terms of the contract will be furnished by the Owner when available at the site. The Contractor shall provide, at his own expense, temporary power poles and appurtenances necessary for conveying power from Owner’s power source to the point of use or generators necessary for supplying power equipment.

APPROVAL OF ELECTRICAL CONNECTIONS – All temporary connections for electricity shall be subject to approval of the Engineer and Owner, and shall be removed in like manner at the Contractor’s expense prior to final acceptance of the work.

R. Safety

GENERAL – Appropriate first aid facilities and supplies shall be kept and maintained by the Contractor at the site of the work. All persons within the construction area shall be required to adhere to all specified safety requirements. All employees of the Contractor and his subcontractor shall be provided with, and required to use, personal protective and life saving equipment as set forth in Article 3 and 24 of Cal-OSHA, and Subpart E of the OSHA Safety and Health Standards for Construction (29CFR 1926)

PUBLIC SAFETY – During the performance of the work the Contractor shall, erect and maintain temporary fences, bridges, railings, and barriers and shall take all other necessary precautions and place proper guards for the prevention of accidents and he shall erect and maintain suitable and sufficient lights and other signals.

S. Explosives and Blasting

The use of explosives on the work will not be permitted.

T. Dust Abatement

The Contractor shall furnish all labor, equipment, and means required and shall carry out effective measures whenever and as necessary to prevent his operation from producing dust in amounts damaging to property, cultivated vegetation, or domestic animals, or causing a nuisance to persons living in or occupying buildings in the vicinity. The Contractor shall be responsible for any damage resulting from any dust originating from his operations. The dust abatement measures shall be continued until the Contractor is relieved of further responsibility by the Engineer. No separate payment will be allowed for dust abatement measures and all costs shall be included in the Contractor’s bid price.

U. Rubbish Control

During the progress of the work, the Contractor shall clean the site of the work and other areas used by him weekly and shall keep the site in a neat and clean condition, and free from any accumulation of rubbish. The Contractor shall dispose of all rubbish and waste materials of any nature occurring at the work site, and shall establish regular intervals of collection and disposal of such materials and waste. He shall also keep his haul roads free from dirt, rubbish, and unnecessary obstructions resulting from the operations. Equipment and material storage shall be confined to areas approved by the Engineer. Disposal of all rubbish and surplus materials shall be off the site of construction, at the Contractor's expense, all in accordance with local codes and ordinances governing locations and methods of disposal, and in conformance with all applicable safety laws, and to the particular requirements of Subpart H, Section 1926.252 of the OSHA Safety and Health Standards for Construction.

V. Sanitation

TOILET FACILITIES – Fixed or portable chemical toilets shall be provided wherever needed for the use of employees. Toilet at construction job sites shall conform to the requirements of Subpart D, Section 1926.51 of the OSHA Standards for Construction.

SANITARY AND OTHER ORGANIC WASTES – The Contractor shall establish a regular daily collection of all sanitary and any organic wastes. All wastes and refuse from sanitary facilities provided by the Contractor or organic material wastes from any other source related to the Contractor's operations shall be disposed of away from the site in a manner satisfactory to the Engineer and in accordance with all laws and regulations pertaining thereto. Disposal of all such wastes shall be at the Contractor's expense.

W. Chemicals

All chemicals used during project construction or furnished for project operation, whether defoliant, soil sterilant, herbicide, pesticide, disinfectant, polymer, reactant or of other classification, shall show approval of either the U.S. Environmental Protection Agency or the U.S. Department of Agriculture. Use of all such chemicals and disposal of residues shall be in strict accordance with the printed instructions of the manufacturer.

SECTION IV

2014-04EL, "Demolition of Building
Located at 215 East Barbour Street"

IV-1

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PART 1 -- GENERAL

1.01 SCOPE OF WORK

The scope of work for this project includes the following for 215 E. Barbour Street, in Banning, California:

Demolition and disposal of a one-story, wood structure with a composite shingle roof, including concrete slabs on grade, garage and patio areas, and demolition, filling and leveling of concrete cellar. Work shall include the capping of all connections to the public sewer system and removal of trees, landscaping and fencing, excluding perimeter fencing. Bids should be an inclusive price to provide all labor, materials, and equipment needed to accomplish the work described above. All work shall be done in accordance with the City of Banning's Standard Specifications. The contractor must comply with all National Pollutant Discharge Elimination System (NPDES) and Air Quality Management District (AQMD) requirements including, but not limited to implementing applicable Best Management Practices (BMPs) as required by the Public Works Inspector.

Note: An asbestos survey conducted on the structure concluded that the building contains asbestos material. Said survey is attached as Exhibit "B". As part of this contract, it will be the responsibility of the contractor for employing an individual/company with all required licenses, if contractor not currently in possession of said licenses, for the removal of asbestos material prior to the commencement of demolition including acquiring all necessary permits. A manifest report confirming removal shall be provided to the City Engineer.

A. Work included:

1. Carefully demolish and remove from the site those items mentioned in above scope and shown in Exhibit "A". Furnish materials and perform labor required to execute this work as required by the Drawing and/or as specified and as necessary to complete the Contract, including, but not limited to, these major items:
 - a. Protection of existing improvements to remain.
 - b. Barricades, lights, signs and safety precautions required by governing codes.
 - c. Removal and disposition of all material resulting from this work.
 - d. Protection of existing vegetation or shrubbery to remain.
 - e. Cleaning existing items to remain.
 - f. Cap existing utility lines (water, electric, sewer, etc.) as required by the Public Works Inspector, and such lines not shown but encountered in the course of work. This shall include the removal of existing grease traps.
 - g. Within the limits of removal, all trees, stumps, roots 1-1/2" inches in diameter, buried logs shall be removed 3 feet below the existing ground surface.

1.02 GENERAL REQUIREMENTS

- A. All bidders submitting bids for this work shall first examine the site and all conditions and limitations thereon and thereabouts. The bid shall take into account all such conditions and limitations, whether or not the same are specifically mentioned in any of the contract documents and every bid shall be construed as including whatever sums are needed to complete the work in every part as shown, described, or reasonably required or implied, and attain the completed conditions contemplated by the Contract. The demolition drawings, including demolition work shown on construction drawings, shall be considered as a guide only. The exact extent of the demolition and reconstruction work shall be determined by a site visit and investigation.
- B. Partial removal: Items scheduled to be removed and of salvageable value to Contractor, excluding those items to be retained by the Owners, may be removed from the structure as work progresses. Salvaged items must be transported from site as they are removed.
- C. Noise control: Carry on all work in a manner which will produce the least amount of noise. Instruct all workmen in noise control procedures.
- D. Items of existing work indicated to remain upon completion of the Contract, but which require removal to complete the work, shall be carefully removed and replaced upon completion. The replaced work shall match its condition at the start of the work.

1.03 QUALITY ASSURANCE

Use adequate numbers of skilled workmen who are thoroughly trained and experienced in the necessary crafts and who are completely familiar with the specified requirements and the methods needed for proper performance of the work of this Section.

PART 2 -- EXECUTION

2.01 GENERAL PROVISIONS

- A. By careful study of the Contract Documents, determine the location and extent of selective demolition to be performed.
- B. In company with the Owner, after receiving Notice to Proceed, visit the site and verify the extent and location of selective demolition required.
 - 1. Carefully identify limits of selective demolition.
 - 2. Mark interface surfaces as required to enable workmen also to identify items to be removed and items to be left in place intact.

- C. Prepare an organized plan for demolition and removal of items and submit to City Engineer for approval.
 - 1. Shut off, cap, and otherwise protect existing public utility lines in accordance with the requirements of the City of Banning. Review plans, and confer with the Public Works Inspector, to determine which lines are to be abandoned and which are to be kept active.
 - 2. Completely remove items scheduled to be so demolished and removed, leaving surfaces clean, solid, and ready to receive new materials.
 - 3. In all activities, comply with pertinent regulations of governmental agencies having jurisdiction.

- D. Demolished material shall be considered to be the property of the Contractor and shall be completely removed from the job site. Do not store or permit debris to accumulate on the site. Burning of removed materials from demolished operations will not be permitted on site.

2.02 POLLUTION CONTROLS

- A. Use temporary enclosures and other suitable methods to limit dust and dirt rising and scattering in air to lowest practical level. Comply with governing regulations pertaining to environmental protection.
 - 1. Do not use water when it may create hazardous or objectionable conditions such as ice, flooding, and pollution.

- B. Clean adjacent structures and improvements of dust, dirt, and debris caused by demolition operations, as directed by the Public Works Inspector. Return adjacent areas to condition existing prior to start of work.

2.03 PROTECTION

- A. Site security: Erect wire or solid wood fences, barricades, warning lights and signs as required by the governing building code, to protect all manner of person from injury, to prevent trespassing, and to prevent theft or damage to the work.

- B. Protection of work to remain: Use stakes, barricades, and such other means of protection as required to prevent damage to existing work and equipment to remain.

- C. Protect all landscaping scheduled to remain.

- D. Ensure safe passage of persons around area of demolition. Conduct operations to prevent injury to adjacent buildings, structures, other facilities, and persons.
 - 1. Erect temporary covered passageways as required by authorities having jurisdiction.

2. Provide interior and exterior shoring, bracing, or support to prevent movement, settlement or collapse of building structure to remain, if needed; as determined by the City Engineer.

2.04 TRAFFIC

- A. Conduct demolition operations and removal of debris to ensure minimum interference with roads, streets, walks, and other adjacent occupied or used facilities.
- B. Do not close or obstruct streets, walks or other occupied or used facilities without permission from the City Engineer. Provide alternate routes around closed or obstructed traffic ways if required by him.

2.05 UTILITY SERVICES

- A. It is the contractor's responsibility to coordinate the shut-off and capping of all utility with each respective purveyor.

2.06 REPLACEMENTS

- A. In the event of demolition of items not so scheduled to be demolished, promptly replace such items to the acceptance of the City Engineer and at no additional cost to the Owner.

2.07 ASPHALT CONCRETE PAVEMENT

- A. All asphalt concrete pavement damaged, cut, trenched, etc. and any base material under the pavement shall be replaced and/or repaired using same specifications as existing pavement.

2.08 REMOVED MATERIALS TO BE SALVAGED OR REUSED

- A. Materials to be salvaged will be determined by the City Engineer.
- B. Exercise extreme care when removing materials to be salvaged or reused. Use only mechanics skilled in the appropriate crafts.
- C. Store and protect salvaged materials until needed to be re-installed on the project, or deliver to Owner in good condition.

2.9 DEMOLITION

Concrete: Exercise due caution in cutting and/or patching concrete so as not to damage or deface that portion of the existing structure (foundation) which is to remain. Should any such impairment occur, immediately clean or restore to original condition at no cost to Owner.

EXHIBIT "A"

SITE MAP

541-260-030; -031; -040; -043, -045

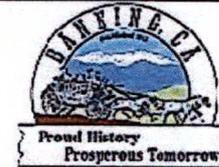
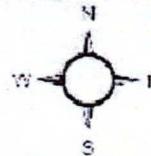
Exhibit B



1" = 188 ft

Parcel Merger
No. 14-40101

01/27/2014



This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Banning staff for the most up-to-date information.

126

24-6-1
541-26

T.C.A. 100

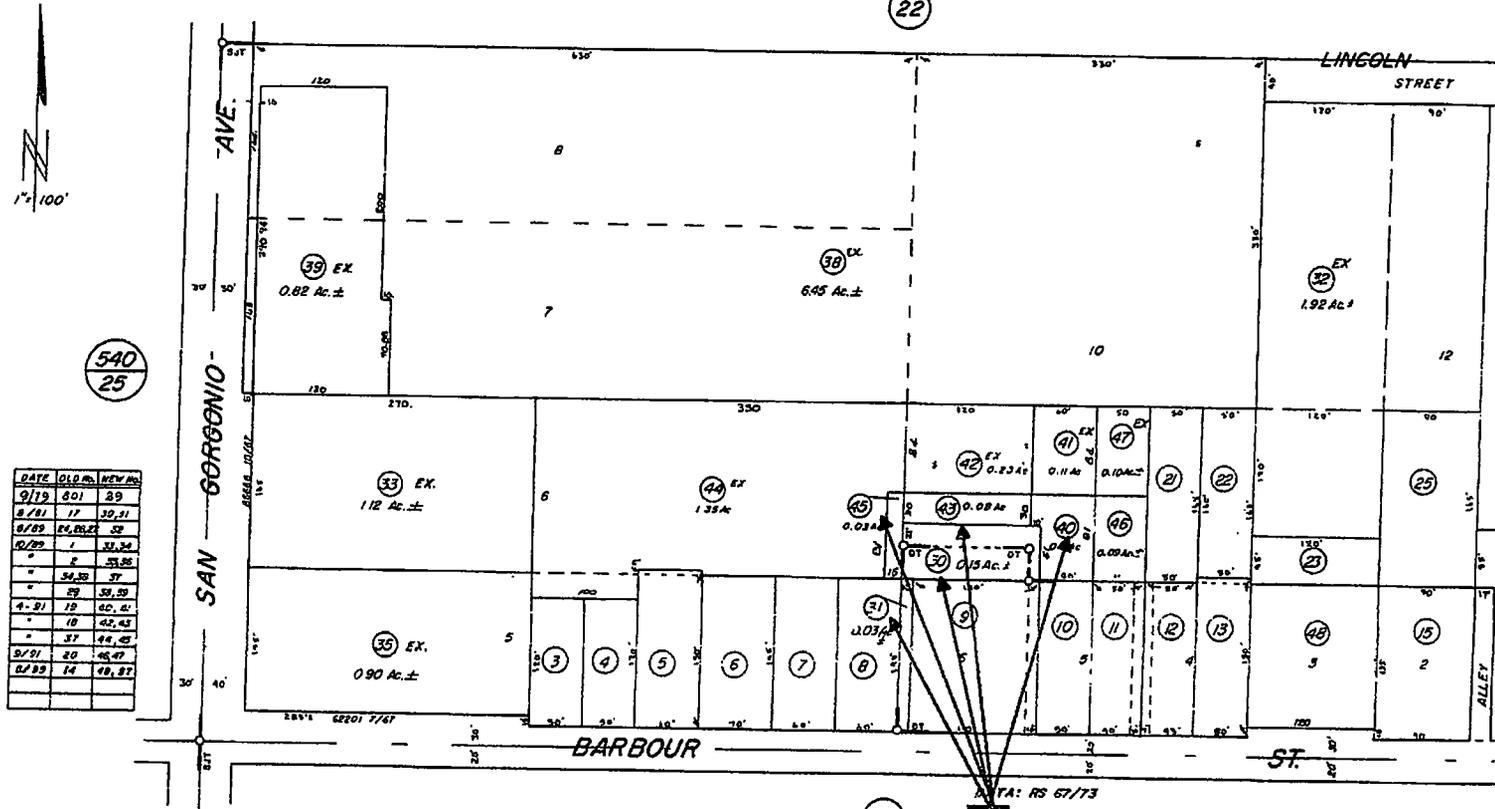
POR. S.1/2 S.W.1/4 SEC.10, T.35,R.1E.

THIS MAP
ASSESSMENT PU

Order: QuickView Doc: RV:A 541-26--06065

Page 1 of 1

Created By: larrylegaspi Printed: 5/20/2014 4:50:59 PM PST



MB 8/62 THE DAVIS TRACT
MB 1/55 S. D. SAN JOSE TRACT

OCT. 1969

ASSESSOR'S MAP
RIVERSIDE COUN
BH

127

EXHIBIT "B"
ASBESTOS SURVEYS

ASBESTOS & LEAD SURVEY REPORT

City Of Banning

215 E Barbour Street
Banning, California 92220

Project No.: LAS-106614

August 28, 2014

Prepared for:

City of Banning Electric Department
176 East Lincoln Street
Banning, CA 92220



August 28, 2014

Client: City of Banning Electric Department
176 East Lincoln Street
Banning, CA 92220

Subject: Limited Asbestos & Lead Survey Report
City Of Banning – 215 E Barbour Street, Banning, California 92220

Attention: Ms. Carla Young

Introduction

This letter summarizes the Limited Asbestos-Containing Materials (ACM) and Lead-Based Paint (LBP) Survey performed by Dynamic Environmental Services, Inc., (DES) at the above referenced property. The survey was performed on August 27, 2014, by Jason Skarseth, under the supervision of Jaime Guillen of DES. Mr. Guillen is a State of California Department of Occupational Safety and Health Certified Asbestos Consultant (CAC Cert No. 063974) and State of California Department of Public Health (DPH) Certified Lead-Based Paint Inspector/Assessor (Cert. No. 13062). The purpose of this limited survey was to identify the existence of any ACM and LPB within affected building materials/components at the subject property that may be disturbed during demolition/renovation activities.

Methods

The ACM and LBP survey was restricted to the materials to be disturbed by possible abatement/remediation.

1. *Interior:* Drywall/Joint Compound, Ceiling Tile, Vinyl Floor Tile/Mastic, Ceramic Tile, and Wood Components.
2. *Exterior:* Stucco, Capsheet Shingles, Roofing Material, Penetration Mastic, and Wood Components.

No previous ACM or LBP survey reports were provided for review.
No as-built construction records were provided for review.

The asbestos inspection was performed in conformance with protocols set forth by the Environmental Protection Agency (EPA) Asbestos Hazard Emergency Response Act (AHERA), the National Emission Standards for Hazardous Air Pollutants (NESHAP), the US Department of Health, and California Department of Occupational Safety and Health (Cal/OSHA). The lead based-paint survey was performed in general conformance with the 1995 HUD Guidelines for the evaluation and control of lead-based paint hazards in housing (1997 revised chapter 7 of the HUD guidelines) and the Department of Health Services (DHS) Title 17 Regulations.

The lead based-paint survey was performed in general conformance with the 1995 HUD Guidelines for the evaluation and control of lead-based paint hazards in housing (1997 revised chapter 7 of the HUD guidelines) and the Department of Health Services (DHS) Title 17 Regulations using a Niton XLP 703A X-Ray Fluorescence (XRF) spectrum analyzer.

Materials suspected of containing ACM or LBP that are scheduled to be disturbed by possible abatement appear in the attached Asbestos and Lead Sampling Survey Summary Tables. Since the ACM and LBP survey was restricted based upon the possible abatement, if revisions to the anticipated abatement are made that impact additional materials or areas, it is important that DES be contacted to review the changes and/or conduct additional asbestos survey work to address potential impacts to untested materials.

Asbestos Samples were collected in such a manner as to minimize release of the material into the surroundings. Material type, sample number, sample location and other pertinent information were recorded at the time of sampling. Each sample was placed in an airtight polyethylene bag labeled with a unique sample number and submitted to LA Testing's NVLAP-accredited laboratory for analysis. Samples were analyzed in accordance with EPA Method 600/R-93-116, using polarized light microscopy (PLM) with dispersion staining and using visual area estimation to determine percent asbestos content. This method allows for the identification of the primary types of asbestos used in building materials. The lower limit of detection for this method is one percent. Samples containing less than one percent asbestos by PLM with visual area estimation are reported as Trace.

Painted or varnished surfaces were analyzed for LBP using a Thermo Scientific NITON[®] XLP 703A X-ray Fluorescence Spectrum Analyzer. The Niton XLP 703A XRF analyzer uses a Cadmium 109 (Cd) isotope radioactive source to 'excite' the atomic structure of painted surfaces. Once 'excited', lead (Pb) atoms emit unique x-ray fluorescence radiation energy. The radiation detector within the NITON[®] XLP then translates these x-rays into a quantitative measure of lead concentration. If present, the XLP 703A will determine the amount of lead in paint with a 95% confidence level.

Measurements were taken at points representative of all painted or varnished surfaces for each different testing combination in the areas inspected. In order to obtain a reading, the XRF analyzer is placed with the face of the instrument flush against the surface to be tested. It is then held in place for the duration of the sample, approximately 8 to 16 source seconds, or until the measurement has reached the acceptable range of accuracy. The sampling time is dependent on the age of the radioactive source inside the XRF.

XRF analysis yields the total lead content of a painted surface, hereby not distinguishing between individual concentrations of painted layers. The XRF was calibrated prior to and post analysis with a National Institute of Standards and Testing (NIST) calibration surface.

The property's orientation is described using HUD's recommended guidelines, assigning the letters A, B, C and D to each side. Side A corresponds to the main entrance of the subject building. The remaining side identifications are assigned in a clock-wise manner. Each tested component location is identified using the building's assigned letter as a reference point.

Findings

ACM

Asbestos was identified in the materials and units and/or areas outlined below in Table 1. Detailed laboratory reports and completed Sampling Data Forms are contained in Attachment A.

Table 1: Asbestos Sampling Survey Summary

| Material | Sample No. | Location | Percent Asbestos | Disturbance | Friability (F/NF) |
|-------------------------|------------|-------------------------|------------------|-------------|-------------------|
| Drywall/Joint Compound | 082714-1A | Kitchen, Ceiling | ND | n/a | n/a |
| | 082714-1B | Hallway, East Wall | | | |
| | 082714-1C | Bedroom #1, North Wall | | | |
| Ceiling Tile | 082714-2A | Living Room | ND | n/a | n/a |
| | 082714-2B | | | | |
| | 082714-2C | | | | |
| Vinyl Floor Tile/Mastic | 082714-3A | Bedroom #1 | ND | n/a | n/a |
| Stucco | 082714-4A | Exterior, North Wall | ND | n/a | n/a |
| | 082714-4B | | | | |
| | 082714-4C | | | | |
| Capsheet Shingles | 082714-5A | Exterior, North Wall | ND | n/a | n/a |
| | 082714-5B | Exterior, East Wall | | | |
| | 082714-5C | Exterior, South Wall | | | |
| Roofing Material | 082714-6A | Exterior, at Roof | ND | n/a | n/a |
| | 082714-6B | | | | |
| | 082714-6C | | | | |
| Penetration Mastic | 082714-7A | Roof, at penetrations | 5% | Intact | NF |
| | 082714-7B | | | | |
| | 082714-7C | | | | |
| Vinyl Floor Tile/Mastic | 082714-8A | Bathroom (Top Layer) | ND | n/a | n/a |
| Vinyl Floor Tile/Mastic | 082714-9A | Bathroom (Bottom Layer) | 25% (vinyl) | Intact | NF |

LBP

None of the components/surfaces tested were found to contain lead at or above the regulatory threshold of 1.0 mg/cm².

LBP XRF Survey Summary

A total of 44 XRF readings (including 7 calibration readings) were collected throughout the subject property. Of the 37 actual XRF readings taken, **none** contained lead content greater than 1.0 milligrams per square centimeter (mg/cm²), which is the current regulatory threshold for the identification of LBP as assessed using an XRF instrument. Additional readings confirmed detectable levels of lead in paint (less than 1.0 mg/cm²).

Conclusions

ACM

Materials for which sample analysis by PLM resulted in greater than one percent asbestos (for any one sample collected from a homogeneous material) are classified as ACM under regulations promulgated by (but not limited to) the following agencies: federal EPA, South Coast Air Quality Management District (SCAQMD) California EPA (Cal-EPA), federal OSHA and Cal/OSHA. These materials are also classified as asbestos-containing construction material (ACCM) under Cal/OSHA and California Contractor Licensing Board (CCLB) regulations.

The agencies use the following definitions:

- Federal EPA: materials containing greater than one percent asbestos are ACM
- SCAQMD: materials containing greater than one percent asbestos are ACM
- Cal/OSHA: materials containing greater than 0.1% asbestos by weight are ACCM
- CCLB: materials containing greater than 0.1% asbestos by weight are ACCM

Materials shown in the table as containing more than one percent asbestos are regulated materials under the South Coast Air Quality Management District (SCAQMD) Rule 1403, Cal/OSHA regulations, and numerous additional regulations. Some of the regulatory requirements with significant logistical impacts on building owners and contractors include, but are certainly not limited to, those appearing below. Materials containing more than one-tenth of one percent asbestos also require licensing for asbestos with the CCLB and registration with Cal/OSHA. Certain Cal/OSHA requirements apply to materials containing any level of asbestos, including exposure assessments and wet work methods.

SCAQMD Rule 1403 requires (with limited exceptions) that both friable and non-friable ACM in buildings be removed prior to maintenance, repairs, renovation or demolition that would disturb the material. Work involving the disturbance of asbestos-containing material also requires ten working days prior notification to SCAQMD and notification to Cal/OSHA (exemption for less than 100 SF). These materials should not be disturbed, except by a licensed asbestos abatement contractor who complies with all applicable regulations.

Under the California Health and Safety Code Section 25915 et. seq., notification about asbestos containing construction materials must be provided initially by the building owner within 15 days of receipt of the information to co-owners, tenants, employees, contract workers, or others who may encounter the material, and the notification must be provided annually thereafter. Notification of new asbestos information (such as any ACM or ACCM identified in this report) must be provided within 15 days of the end of each 90-day period. Under Cal/OSHA regulation, this information must also be provided to contractors, sub-contractors or others whose work may disturb ACM or ACCM, prior to submission of bids and performance of work.

LBP

The property owner must maintain all LBP in good condition at all times. Any LBP in poor condition must be stabilized by removal of all loose and flaking paint chips under controlled conditions and application of a primer/encapsulant (seal-coat) over the remaining intact paint.

Isolation, removal/abatement and decontamination of affected areas should be performed as outlined in Chapters 8-14 of the HUD Guidelines. The link below describes the afore-mentioned, including regulatory required provisions for abatement methods, clearance criteria and waste disposal requirements.

Note that paint containing any level of lead is considered to be an occupational hazard for workers involved in the removal/stabilization or disposal of these materials. Removal and disposal of paints containing any detectable amount of lead must be performed in accordance with OSHA and any other applicable regulations.

However, OSHA standards require worker protection when working with paint containing lead, regardless of the concentration. A contractor performing paint removal work should follow the OSHA Lead in Construction Industry Standard, 29 CFR 1926.62, as well as all applicable local, state and federal regulations. The lead content of the paint should be considered when choosing a method to remove the paint, as proper waste disposal requirements and worker protection measures must be followed for worker and occupant safety.

Below is the link for the OSHA Lead in Construction Industry Standard:

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=10641

Additionally, as of April 22, 2010, the EPA mandates that all contractors performing renovations, repairs or painting in pre-1978 or child-occupied housing must be certified by an accredited training provider to do so under the Renovation, Repair and Painting (RRP) Rule.

<http://www.epa.gov/lead/pubs/renovation.htm>

The HUD Guidelines for lead-containing paint requires a lead hazard abatement activity in cases where lead content is above one half of one percent (0.5%) by weight or equal to or in excess of one milligram per square centimeter (1.0 mg/cm²). This requirement for lead hazard abatement only applies to housing that is administrated or funded by HUD. *Section 1017 of the HUD Guidelines, Residential LBP Reduction Act of 1992*, otherwise known as "Title X", defines a lead-based paint hazard as "any condition that causes exposure to lead that would result in adverse human health effects" resulting from lead-contaminated dust, bare, lead-contaminated soil, and/or lead-contaminated paint that is deteriorated or present on accessible, friction, or impact surfaces. Therefore, under Title X, intact LBP on most walls and ceilings would not be considered a "hazard", although the paint should be maintained and its condition monitored to ensure that it does not deteriorate and become a hazard.

The California Department of Health Services (CADHS) *Title 17 CCR Division 1, Chapter 8, section 35033* defines LBP as paint or other surface coating that contains any amount of lead equal to or in excess of 1.0 mg/cm² or more than 0.5% by weight. This requirement for lead hazard abatement only applies to public and residential buildings.

Cal/OSHA and Federal OSHA Lead in Construction Standards consider any amount of lead in paint to be a concern (including levels below regulated thresholds) during renovation and demolition activities.

Additionally, Title X, Section 1018 of the HUD Guidelines has directed HUD and EPA to require the disclosure of known information on LBP and LBP hazards before the sale or lease of most housing built before 1978. Most private housing, public housing, Federally-owned housing, and housing receiving Federal assistance are affected by this rule.

Limitations

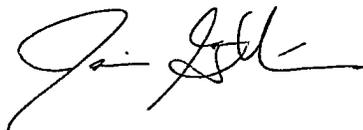
DES has performed this ACM and LBP Sampling Survey in a substantial and workmanlike manner, in accordance with generally accepted methods and practices of the profession, and consistent with that level of care and skill ordinarily exercised by reputable environmental consultants under similar conditions and circumstances. No other representation, guarantee or warranty, express or implied, is included or intended in the asbestos survey report.

Additionally, suspect ACM and/or LBP may be present in the building within inaccessible areas such as hidden or concealed wall cavities, ceilings or floors. Should any suspect ACM and/or LBP be encountered upon exposure of the inaccessible areas, DES recommends sampling and analysis suspect materials to determine the presence or concentration of lead.

The recommendations and conclusions presented as a result of this study apply strictly to the environmental regulations and property conditions existing at the time the study was performed. The sample analytical results are only valid for the time and place of collection and DES does not warrant that these results will be repeatable or are representative of past or future conditions.

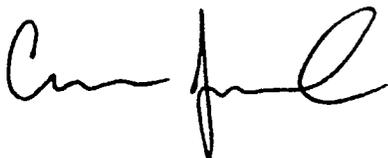
Should you have any questions, need clarifications, or additional information, please contact our office. We thank you for the opportunity to work with you on this project.

Respectfully,
Dynamic Environmental Services, Inc.



Jaime Guillen, CAC, CLIA

State of California Department of Occupational Safety and Health Administration (CAC Cert No. 01-3035)
State of California Department of Public Health (Cert No #13062)



Gerar Jamal, Environmental Engineer

American Indoor Air Quality Council Certified Microbial Consultant (CMC Cert. No. 0708036)
State of California Department of Occupational Safety and Health Administration (CAC Cert No. 01-3035)
State of California Department of Toxic Substances Control Registered Environmental Assessor (REA I #08328)

Distribution: (1) Addressee

ATTACHMENTS

Appendix A – Laboratory Reports
Appendix B – XRF Data

APPENDIX A

LABORATORY REPORTS



LA Testing

11652 Knott Street Unit F5, Garden Grove, CA 92841
Phone/Fax: (714) 828-4999 / (714) 828-4944
<http://www.LATesting.com> gardengrovelab@latesting.com

LA Testing Order: 331415932
CustomerID: 32DYEN78
CustomerPO:
ProjectID:

Attn: **Gerar Jamal**
Dynamic Environmental Services, Inc.
PO Box 27430
Santa Ana, CA 92799

Phone: (714) 550-4757
Fax:
Received: 08/27/14 2:15 PM
Analysis Date: 8/27/2014
Collected:

Project: **City of Banning / 215 E. Barbour St. Banning, CA**

Test Report: Asbestos Analysis of Bulk Materials via EPA 600/R-93/116 Method using Polarized Light Microscopy

| Sample | Description | Appearance | Non-Asbestos | | Asbestos |
|-------------------------------------|------------------------|---|---------------|---------------------------------------|---------------|
| | | | % Fibrous | % Non-Fibrous | % Type |
| 1A-Joint Compound 331415932-0001 | DW/JC Kitchen Ceiling | White Non-Fibrous Homogeneous | | 100% Non-fibrous (other) | None Detected |
| 1A-Drywall 331415932-0001A | DW/JC Kitchen Ceiling | Brown/White Fibrous Heterogeneous | 10% Cellulose | 50% Gypsum 40% Non-fibrous (other) | None Detected |
| 1A-Composite 331415932-0001B | DW/JC Kitchen Ceiling | Brown/White Fibrous Heterogeneous | 10% Cellulose | 50% Gypsum 40% Non-fibrous (other) | None Detected |
| 1B-Joint Compound 331415932-0002 | DW/JC Hallway E Wall | White Non-Fibrous Homogeneous | | 100% Non-fibrous (other) | None Detected |
| 1B-Drywall 331415932-0002A | DW/JC Hallway E Wall | Brown/White Fibrous Heterogeneous | 10% Cellulose | 50% Gypsum 40% Non-fibrous (other) | None Detected |
| 1B-Composite 331415932-0002B | DW/JC Hallway E Wall | Brown/White Fibrous Heterogeneous | 10% Cellulose | 50% Gypsum 40% Non-fibrous (other) | None Detected |
| 1C-Joint Compound 331415932-0003 | DW/JC Bedroom 1 N Wall | White Non-Fibrous Homogeneous | | 100% Non-fibrous (other) | None Detected |
| 1C-Drywall 331415932-0003A | DW/JC Bedroom 1 N Wall | Brown/White Fibrous Heterogeneous | 10% Cellulose | 50% Gypsum 40% Non-fibrous (other) | None Detected |

Analyst(s)
Michael DeCavallas (30)

Michael DeCavallas, Laboratory Manager
or other approved signatory

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Samples analyzed by LA Testing Garden Grove, CA NVLAP Lab Code 101384-0, CA ELAP 1406

Initial report from 08/27/2014 16:38:46



LA Testing

11652 Knott Street Unit F5, Garden Grove, CA 92841

Phone/Fax: (714) 828-4999 / (714) 828-4944

http://www.LATesting.com

gardengrovelab@latesting.com

LA Testing Order: 331415932

CustomerID: 32DYEN78

CustomerPO:

ProjectID:

Attn: **Gerar Jamal**
Dynamic Environmental Services, Inc.
PO Box 27430
Santa Ana, CA 92799

Phone: (714) 550-4757
Fax:
Received: 08/27/14 2:15 PM
Analysis Date: 8/27/2014
Collected:

Project: City of Banning / 215 E. Barbour St. Banning, CA

Test Report: Asbestos Analysis of Bulk Materials via EPA 600/R-93/116 Method using Polarized Light Microscopy

| Sample | Description | Appearance | Non-Asbestos | | Asbestos |
|---------------------------------|--------------------------------------|--|---------------|---------------------------------------|---------------|
| | | | % Fibrous | % Non-Fibrous | % Type |
| 1C-Composite 331415932-0003B | DW/JC Bedroom 1 N Wall | Brown/White Fibrous Heterogeneous | 10% Cellulose | 50% Gypsum 40% Non-fibrous (other) | None Detected |
| 2A 331415932-0004 | 1x1 CT Consealed Spline Living Rm | Brown/White Fibrous Homogeneous | 95% Cellulose | 5% Non-fibrous (other) | None Detected |
| 2B 331415932-0005 | 1x1 CT Consealed Spline Living Rm | Brown/White Fibrous Homogeneous | 95% Cellulose | 5% Non-fibrous (other) | None Detected |
| 2C 331415932-0006 | 1x1 CT Consealed Spline Living Rm | Brown/White Fibrous Homogeneous | 90% Cellulose | 10% Non-fibrous (other) | None Detected |
| 3A-Flooring 331415932-0007 | 12x12 VFT GD Bedroom 1 | Brown/White Non-Fibrous Homogeneous | | 100% Non-fibrous (other) | None Detected |
| 3A-Mastic 331415932-0007A | 12x12 VFT GD Bedroom 1 | Clear Non-Fibrous Homogeneous | | 100% Non-fibrous (other) | None Detected |
| 4A 331415932-0008 | Ext Stucco N Exterior Wall | Gray/White Non-Fibrous Heterogeneous | | 2% Quartz 98% Non-fibrous (other) | None Detected |
| 4B 331415932-0009 | Ext Stucco N Exterior Wall | Gray/White Non-Fibrous Heterogeneous | | 2% Quartz 98% Non-fibrous (other) | None Detected |

Analyst(s)

Michael DeCavallas (30)

Michael DeCavallas, Laboratory Manager
or other approved signatory

EMSL maintains liability limited to cost of analysis. This report relates only to the samples reported and may not be reproduced, except in full, without written approval by EMSL. EMSL bears no responsibility for sample collection activities or analytical method limitations. Interpretation and use of test results are the responsibility of the client. This report must not be used by the client to claim product certification, approval, or endorsement by NVLAP, NIST or any agency of the federal government. Non-friable organically bound materials present a problem matrix and therefore EMSL recommends gravimetric reduction prior to analysis. Samples received in good condition unless otherwise noted. Estimated accuracy, precision and uncertainty data available upon request. Unless requested by the client, building materials manufactured with multiple layers (i.e. linoleum, wallboard, etc.) are reported as a single sample. Reporting limit is 1%
Samples analyzed by LA Testing Garden Grove, CA NVLAP Lab Code 101384-0, CA ELAP 1408

Initial report from 08/27/2014 16:38:46



LA Testing

11652 Knott Street Unit F5, Garden Grove, CA 92841
 Phone/Fax: (714) 828-4999 / (714) 828-4944
<http://www.LATesting.com> gardengrovelab@latesting.com

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| Sample | Description | Appearance | Non-Asbestos | | Asbestos |
|----------------------|-------------------------------------|--|---------------|--------------------------------------|---------------|
| | | | % Fibrous | % Non-Fibrous | % Type |
| 4C 331415932-0010 | Ext Stucco S Exterior Wall | Gray/White Non-Fibrous Heterogeneous | | 2% Quartz 98% Non-fibrous (other) | None Detected |
| 5A 331415932-0011 | Capsheet Shingle N Exterior Wall | White/Black Fibrous Heterogeneous | 20% Cellulose | 80% Non-fibrous (other) | None Detected |
| 5B 331415932-0012 | Capsheet Shingle E Exterior Wall | White/Black Fibrous Heterogeneous | 20% Cellulose | 80% Non-fibrous (other) | None Detected |
| 5C 331415932-0013 | Capsheet Shingle S Exterior Wall | White/Black Fibrous Heterogeneous | 20% Cellulose | 80% Non-fibrous (other) | None Detected |
| 6A 331415932-0014 | Roofing Material Roof | Black Fibrous Heterogeneous | 30% Cellulose | 70% Non-fibrous (other) | None Detected |
| 6B 331415932-0015 | Roofing Material Roof | Black Fibrous Heterogeneous | 30% Cellulose | 70% Non-fibrous (other) | None Detected |
| 6C 331415932-0016 | Roofing Material Roof | Black Fibrous Heterogeneous | 30% Cellulose | 70% Non-fibrous (other) | None Detected |
| 7A 331415932-0017 | Roof Penetration Mastic Roof | Gray/Black Fibrous Homogeneous | | 95% Non-fibrous (other) | 5% Chrysotile |

Analyst(s)
 Michael DeCavallas (30)


 Michael DeCavallas, Laboratory Manager
 or other approved signatory

EMSL maintains liability limited to cost of analysis. This report relates only to the samples reported and may not be reproduced, except in full, without written approval by EMSL. EMSL bears no responsibility for sample collection activities or analytical method limitations. Interpretation and use of test results are the responsibility of the client. This report must not be used by the client to claim product certification, approval, or endorsement by NVLAP, NIST or any agency of the federal government. Non-friable organically bound materials present a problem matrix and therefore EMSL recommends gravimetric reduction prior to analysis. Samples received in good condition unless otherwise noted. Estimated accuracy, precision and uncertainty data available upon request. Unless requested by the client, building materials manufactured with multiple layers (i.e. linoleum, wallboard, etc.) are reported as a single sample. Reporting limit is 1%
 Samples analyzed by LA Testing Garden Grove, CA NVLAP Lab Code 101384-0, CA ELAP 1406

Initial report from 08/27/2014 16:38:46



LA Testing

11652 Knott Street Unit F5, Garden Grove, CA 92841
Phone/Fax: (714) 828-4999 / (714) 828-4944
<http://www.LATesting.com> gardengrovelab@latesting.com

LA Testing Order: 331415932
CustomerID: 32DYEN78
CustomerPO:
ProjectID:

Attn: **Gerar Jamal**
Dynamic Environmental Services, Inc.
PO Box 27430
Santa Ana, CA 92799

Phone: (714) 550-4757
Fax:
Received: 08/27/14 2:15 PM
Analysis Date: 8/27/2014
Collected:

Project: City of Banning / 215 E. Barbour St. Banning, CA

Test Report: Asbestos Analysis of Bulk Materials via EPA 600/R-93/116 Method using Polarized Light Microscopy

| Sample | Description | Appearance | Non-Asbestos | | Asbestos |
|-------------------------------|----------------------------------|--|--------------|--------------------------|----------------|
| | | | % Fibrous | % Non-Fibrous | % Type |
| 7B 331415932-0018 | Roof Penetration Mastic Roof | Gray/Black Non-Fibrous Homogeneous | | 95% Non-fibrous (other) | 5% Chrysotile |
| 7C 331415932-0019 | Roof Penetration Mastic Roof | Gray/Black Non-Fibrous Homogeneous | | 95% Non-fibrous (other) | 5% Chrysotile |
| 8A-Flooring 331415932-0020 | 12x12 VFT GD Bathroom Top | White Non-Fibrous Homogeneous | | 100% Non-fibrous (other) | None Detected |
| 8A-Mastic 331415932-0020A | 12x12 VFT GD Bathroom Top | Clear Non-Fibrous Homogeneous | | 100% Non-fibrous (other) | None Detected |
| 9A-Linoleum 331415932-0021 | 12x12 VFT/Mastic Bathroom Bottom | White/Green Fibrous Heterogeneous | | 75% Non-fibrous (other) | 25% Chrysotile |
| 9A-Mastic 331415932-0021A | 12x12 VFT/Mastic Bathroom Bottom | Brown Non-Fibrous Homogeneous | | 100% Non-fibrous (other) | None Detected |

Analyst(s)
Michael DeCavallas (30)

Michael DeCavallas, Laboratory Manager
or other approved signatory

EMSL maintains liability limited to cost of analysis. This report relates only to the samples reported and may not be reproduced, except in full, without written approval by EMSL. EMSL bears no responsibility for sample collection activities or analytical method limitations. Interpretation and use of test results are the responsibility of the client. This report must not be used by the client to claim product certification, approval, or endorsement by NVLAP, NIST or any agency of the federal government. Non-friable organically bound materials present a problem matrix and therefore EMSL recommends gravimetric reduction prior to analysis. Samples received in good condition unless otherwise noted. Estimated accuracy, precision and uncertainty data available upon request. Unless requested by the client, building materials manufactured with multiple layers (i.e. linoleum, wallboard, etc.) are reported as a single sample. Reporting limit is 1%
Samples analyzed by LA Testing Garden Grove, CA NVLAP Lab Code 101384-0, CA ELAP 1408

Initial report from 08/27/2014 16:38:46



Asbestos Chain of Custody
LA Testing Order Number (Lab Use Only):

#331415932

LA TESTING
 11652 KNOTT STREET
 UNIT F5
 GARDEN GROVE, CA 92841
 PHONE: (714) 828-4999
 FAX: (714) 828-4944

Company: DYNAMIC ENV. LA Testing-Bill to: Same Different
 If Bill to is Different note instructions in Comments**
 Street: _____ Third Party Billing requires written authorization from third party
 City: _____ State/Province: _____ Zip/Postal Code: _____ Country: _____
 Report To (Name): _____ Fax #: _____
 Telephone #: _____ Email Address: DYNAMICENVR@GMAIL.COM
 Project Name/Number: CITY OF BANNING 215 E. BARBOUR ST. BANNING, CA.
 Please Provide Results: Fax Email Purchase Order: _____ U.S. State Samples Taken: _____

Turnaround Time (TAT) Options* - Please Check
 3 Hour 6 Hour 24 Hour 48 Hour 72 Hour 96 Hour 1 Week 2 Week

*For TEM Air 3 hours through 6 hours, please call ahead to schedule. *There is a premium charge for 3 Hour TEM AHERA or EPA Level II TAT. You will be asked to sign an authorization form for this service. Analysis completed in accordance with LA Testing's Terms and Conditions located in the Analytical Price Guide.

| | | |
|---|--|--|
| PCM - Air <input type="checkbox"/> NIOSH 7400 <input type="checkbox"/> w/ OSHA 8hr. TWA PLM - Bulk (reporting limit) <input checked="" type="checkbox"/> PLM EPA 600/R-93/116 (<1%) <input type="checkbox"/> PLM EPA NOB (<1%) Point Count <input type="checkbox"/> 400 (<0.25%) <input type="checkbox"/> 1000 (<0.1%) Point Count w/Gravimetric <input type="checkbox"/> 400 (<0.25%) <input type="checkbox"/> 1000 (<0.1%) <input type="checkbox"/> NYS 198.1 (friable in NY) <input type="checkbox"/> NYS 198.6 NOB (non-friable-NY) <input type="checkbox"/> NIOSH 9002 (<1%) | TEM - Air <input type="checkbox"/> 4-4.5hr TAT (AHERA only) <input type="checkbox"/> AHERA 40 CFR, Part 763 <input type="checkbox"/> NIOSH 7402 <input type="checkbox"/> EPA Level II <input type="checkbox"/> ISO 10312 TEM - Bulk <input type="checkbox"/> TEM EPA NOB <input type="checkbox"/> NYS NOB 198.4 (non-friable-NY) <input type="checkbox"/> Chatfield SOP <input type="checkbox"/> TEM Mass Analysis-EPA 600 sec. 2.5 TEM - Water: EPA 100.2 Fibers >10µm <input type="checkbox"/> Waste <input type="checkbox"/> Drinking All Fiber Sizes <input type="checkbox"/> Waste <input type="checkbox"/> Drinking | TEM- Dust <input type="checkbox"/> Microvac - ASTM D 5755 <input type="checkbox"/> Wipe - ASTM D6480 <input type="checkbox"/> Carpet Sonication (EPA 600/J-93/167) Soil/Rock/Vermiculite <input type="checkbox"/> PLM CARB 435 - A (0.25% sensitivity) <input type="checkbox"/> PLM CARB 435 - B (0.1% sensitivity) <input type="checkbox"/> TEM CARB 435 - B (0.1% sensitivity) <input type="checkbox"/> TEM CARB 435 - C (0.01% sensitivity) <input type="checkbox"/> EPA Protocol (Semi-Quantitative) <input type="checkbox"/> EPA Protocol (Quantitative) Other: <input type="checkbox"/> |
|---|--|--|

Check For Positive Stop - Clearly Identify Homogenous Group

Samplers Name: JRS Samplers Signature:

| Sample # | Sample Description | Volume/Area (Air) HA # (Bulk) | Date/Time Sampled |
|----------|--|----------------------------------|----------------------|
| 1A | DW/JC KITCHEN (DEALING) | | 8/27/14 |
| 1B | ↓ HALLWAY (E WALL) | | ↓ |
| 1C | ↓ BEDROOM #1 (N WALL) | | ↓ |
| 2A | 1'x1' CT (CONCRETE SPLINE) LIVING ROOM | | |
| 2B | ↓ ↓ ↓ | | ↓ |
| 2C | ↓ ↓ ↓ | | ↓ |
| 3A | 12X12 VET GLO BEDROOM #1 | | |
| 4A | EXT STUCCO N. EXTERIOR (WALL) | | ↓ |

Client Sample # (s): 1A - 9A Total # of Samples: 21

Relinquished (Client): JRS Date: 8/27/14 Time: _____

Received (Lab): AJC Date: 8/27/14 Time: 14:15

Comments/Special Instructions: _____

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Asbestos Chain of Custody
LA Testing Order Number (Lab Use Only):

LA TESTING
 11652 KNOTT STREET UNIT F5
 GARDEN GROVE, CA 92841

#331415932

Additional Pages of the Chain of Custody are only necessary if needed for additional sample information

| Sample # | Sample Description | Volume/Area (Air) HA # (Bulk) | Date/Time Sampled |
|---------------------------------|------------------------------------|----------------------------------|----------------------|
| 4B | EXT. STUCCO N EXTERIOR (WALL) | | 8/27/14 |
| 4C | ↓ S EXTERIOR ↓ | | ↓ |
| 5A | CAPSHEET SHINGLE N EXTERIOR (WALL) | | |
| 5B | ↓ E EXTERIOR (WALL) | | |
| 5C | ↓ S EXTERIOR (WALL) | | |
| 6A | ROOFING MATERIAL ROOF | | |
| 6B | ↓ | | |
| 6C | ↓ | | |
| 7A | ROOF PENETRATION MASTIC | | |
| 7B | ↓ | | |
| 7C | ↓ ↓ | | |
| 8A | 12X12 VFT GID BATHROOM (TOP) | | |
| 9A | 12X12 VFT & MASTIC ↓ (BOTTOM) | | ↓ |
| | | | |
| | | | |
| | | | |
| *Comments/Special Instructions: | | | |

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APPENDIX B

XRF DATA SHEETS

City of Banning
215 E Barbour St.
Banning, CA. 92220

| Reading No | Time | Component | Substrate | Side | Condition | Room | Results | PbC | PbC Error |
|------------|---------------|--------------|-----------|-------------------|-----------|-------------------|----------|-------|-----------|
| 1 | 8/27/14 12:23 | SHUTTER_CAL | | | | | 373.61 | 1.59 | 0 |
| 2 | 8/27/14 12:37 | CALIBRATION | | | | | Positive | 1 | 0.1 |
| 3 | 8/27/14 12:38 | CALIBRATION | | | | | Negative | 0.9 | 0.1 |
| 4 | 8/27/14 12:38 | CALIBRATION | | | | | Negative | 0.9 | 0.1 |
| 5 | 8/27/14 12:40 | WALL | STUCCO | A | INTACT | Exterior | Negative | 0.01 | 0.02 |
| 6 | 8/27/14 12:41 | WALL | WOOD | B | INTACT | Exterior | Negative | 0 | 0.02 |
| 7 | 8/27/14 12:43 | WALL | STUCCO | C | INTACT | Exterior | Negative | 0.01 | 0.02 |
| 8 | 8/27/14 12:44 | WALL | SHINGLE | C | INTACT | Exterior | Negative | 0 | 0.02 |
| 9 | 8/27/14 12:44 | WALL | SHINGLE | D | INTACT | Exterior | Negative | 0.01 | 0.05 |
| 10 | 8/27/14 12:45 | TRIM | WOOD | A | INTACT | Exterior | Negative | 0.4 | 0.3 |
| 11 | 8/27/14 12:45 | TRIM | WOOD | B | INTACT | Exterior | Positive | 1.4 | 0.7 |
| 12 | 8/27/14 12:45 | TRIM | WOOD | C | INTACT | Exterior | Negative | 0.3 | 0.27 |
| 13 | 8/27/14 12:46 | TRIM | WOOD | D | INTACT | Exterior | Negative | 0.5 | 0.2 |
| 14 | 8/27/14 12:47 | WALL | DRYWALL | A | INTACT | Kitchen | Negative | 0.22 | 0.31 |
| 15 | 8/27/14 12:47 | WALL | DRYWALL | B | INTACT | Kitchen | Negative | 0 | 0.02 |
| 16 | 8/27/14 12:47 | WALL | DRYWALL | C | INTACT | Kitchen | Negative | 0 | 0.02 |
| 17 | 8/27/14 12:47 | WALL | DRYWALL | D | INTACT | Kitchen | Negative | 0.11 | 0.44 |
| 18 | 8/27/14 12:48 | CEILING | DRYWALL | D | INTACT | Kitchen | Negative | 0 | 0.02 |
| 19 | 8/27/14 12:49 | WINDOW FRAME | WOOD | D | INTACT | Kitchen | Negative | 0.16 | 0.24 |
| 20 | 8/27/14 12:49 | WINDOW SILL | WOOD | D | INTACT | Kitchen | Negative | 0 | 0.02 |
| 21 | 8/27/14 12:51 | WALL | DRYWALL | B | INTACT | Hallway/Dining Rm | Negative | 0 | 0.02 |
| 22 | 8/27/14 12:51 | WALL | DRYWALL | C | INTACT | Hallway/Dining Rm | Negative | 0.01 | 0.03 |
| 23 | 8/27/14 12:52 | WALL | DRYWALL | D | INTACT | Hallway/Dining Rm | Negative | 0.02 | 0.04 |
| 24 | 8/27/14 12:53 | CEILING | DRYWALL | D | INTACT | Hallway/Dining Rm | Negative | 0.02 | 0.03 |
| 25 | 8/27/14 12:53 | FLOOR | CERAMIC | D | INTACT | Hallway/Dining Rm | Negative | 0.03 | 0.05 |
| 26 | 8/27/14 12:54 | DOOR FRAME | WOOD | A | INTACT | Hallway/Dining Rm | Negative | 0.07 | 0.06 |
| 27 | 8/27/14 12:55 | WALL | DRYWALL | A | INTACT | Bedroom #1 | Negative | 0.01 | 0.02 |
| 28 | 8/27/14 12:55 | WALL | DRYWALL | B | INTACT | Bedroom #1 | Negative | 0 | 0.02 |
| 29 | 8/27/14 12:56 | WALL | DRYWALL | C | INTACT | Bedroom #1 | Negative | 0.06 | 0.08 |
| 30 | 8/27/14 12:56 | WALL | DRYWALL | D | INTACT | Bedroom #1 | Negative | 0 | 0.02 |
| 31 | 8/27/14 12:56 | DOOR | WOOD | B | INTACT | Bedroom #1 | Negative | 0.11 | 0.24 |
| 32 | 8/27/14 12:57 | DOOR FRAME | WOOD | B | INTACT | Bedroom #1 | Negative | 0 | 0.02 |
| 33 | 8/27/14 12:57 | WINDOW FRAME | WOOD | A | INTACT | Bedroom #1 | Negative | 0 | 0.02 |
| 34 | 8/27/14 12:57 | WINDOW SILL | WOOD | A | INTACT | Bedroom #1 | Negative | 0 | 0.03 |
| 35 | 8/27/14 12:58 | WALL | DRYWALL | A | INTACT | Bathroom | Negative | 0 | 0.02 |
| 36 | 8/27/14 12:58 | WALL | DRYWALL | B | INTACT | Bathroom | Negative | 0 | 0.02 |
| 37 | 8/27/14 12:59 | WALL | DRYWALL | C | INTACT | Bathroom | Negative | 0 | 0.02 |
| 38 | 8/27/14 12:59 | WALL | DRYWALL | D | INTACT | Bathroom | Negative | 0 | 0.02 |
| 39 | 8/27/14 12:59 | CEILING | DRYWALL | D | INTACT | Bathroom | Negative | 0 | 0.02 |
| 40 | 8/27/14 13:00 | DOOR | WOOD | B | INTACT | Bathroom | Negative | < LOD | 0 |
| 41 | 8/27/14 13:00 | DOOR FRAME | WOOD | B | INTACT | Bathroom | Negative | 0 | 0.02 |
| 42 | 8/27/14 13:01 | CALIBRATION | | | | | Positive | 1 | 0.1 |
| 43 | 8/27/14 13:01 | CALIBRATION | | | | | Positive | 1 | 0.1 |
| 44 | 8/27/14 13:02 | CALIBRATION | | | | | Positive | 1 | 0.1 |
| | | | | Total Readings | 44 | Action Level | 1 | | |
| | | | | Calibrations | 7 | Units | ug/cm2 | | |
| | | | | Actual Readings | 37 | | | | |
| | | | | Positive Readings | 0 | | | | |

CITY COUNCIL AGENDA

Date: November 12, 2014
TO: Honorable Mayor and City Council
FROM: Fred Mason, Electric Utility Director
SUBJECT: Resolution No. 2014-78. Approving the purchase of two 2015 Chevrolet 3500 Crew Cab 4 Wheel Drive Vehicles from Diamond Hills Auto Group.

RECOMMENDATIONS: The City Council adopt Resolution No. 2014-78 Approving the purchase of two (2) 2015 Chevrolet 3500 Crew Cab 4 Wheel Drive vehicles from Diamond Hills Auto Group of Banning, California in the amount of \$37,980.80 each, totaling \$75,961.60, plus taxes and fees.

BACKGROUND: On October 10 & October 17, 2014, the Banning Electric Utility Department advertised for bids for (2) 2015 Chevrolet 3500 Crew Cab 4 Wheel Drive vehicles.

These vehicles are needed to replace Unit 306, a 2001 Dodge Ram Crew Truck and Unit 308, a 2002 Ford F350 Crew Truck, both of which have exceeded their useful life.

The request for bids was advertised on October 10 and October 17, 2014. Diamond Hills Auto Group of Banning, California, was the only responsible bidder that submitted a bid on October 20, 2014, bid sheet is attached as Exhibit "A". The cost for each vehicle is listed as \$37,980.80, for a total of \$75,961.60, plus taxes and fees. The total cost of the purchase is estimated at \$41,819.51 each including taxes and fees, for a total not to exceed \$83,639.02.

FISCAL DATA: Funds sufficient to cover the \$83,639.02 are available in FY 2014-15 budget in Account No. 670-7000-473.90-52 (Vehicles).

RECOMMENDED BY:



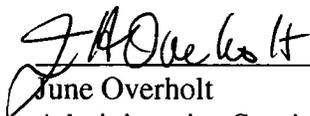
Fred Mason
Electric Utility Director

APPROVED BY:



Homer Croy
Interim City Manager

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

RESOLUTION NO. 2014-78

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE PURCHASE OF TWO (2) 2015 CHEVROLET 3500 CREW CAB 4 WHEEL DRIVE VEHICLES FOR THE CITY OF BANNING ELECTRIC UTILITY DEPARTMENT

WHEREAS, the budget for the City of Banning for the Fiscal Year commencing July 1, 2014 and ending June 30, 2015 was approved and adopted on June 24, 2014; and

WHEREAS, the approved Budget is in accordance with all applicable ordinances of the City and all applicable statues of the State; and

WHEREAS, the Banning Electric Utility requires the purchase of two crew vehicles to replace two vehicles that have exceeded their useful life, to conduct its operations; and

WHEREAS, funds are available in Electric Operations account number 670-7000-473.90-52 for said vehicle purchase in the amount not to exceed \$83,639.02;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Banning as follows:

SECTION 1. Adopt Resolution No. 2014-78, awarding the bid for the purchase of two (2) 2015 Chevrolet 3500 Crew Cab 4 Wheel Drive vehicles and all other bids are hereby rejected.

SECTION 2. Authorize the City Manager to execute the contract agreement with Diamond Hills Auto Group of Banning, California, for the purchase of two (2) 2015 Chevrolet 3500 Crew Cab 4 Wheel Drive vehicles.

PASSED, APPROVED AND ADOPTED this 12th day of November, 2014.

Deborah Franklin, Mayor
City of Banning

**APPROVED AS TO FORM AND
LEGAL CONTENT:**

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

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ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2014-78 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of November, 2014, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, City Clerk
City of Banning, California

Exhibit "A"

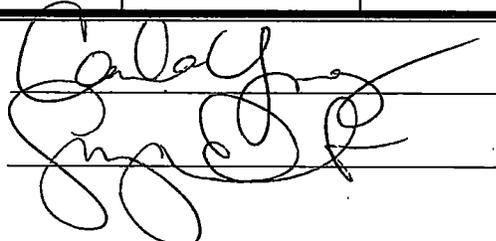
**SUMMARY OF BIDS RECEIVED
CITY OF BANNING**

PROJECT NO.: _____

DESCRIPTION: PURCHASE OF TWO 2015 CHEVROLET 3500 CREW CAB 4WD
1-TON DUALY TRUCKS

BID OPENING DATE: OCTOBER 20, 2014 **TIME:** 2:30 P.M.

| NAME OF BIDDER: | | | | TOTAL BID AMOUNT: |
|---|---|---|---|-------------------|
| Diamond Hills Auto Group Banning, CA | / | / | / | \$75,961.60 |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

VERIFIED BY: 

CITY COUNCIL AGENDA

DATE: November 12, 2014
TO: City Council
FROM: Duane Burk, Director of Public Works
SUBJECT: Resolution No. 2014-79, "Awarding the Construction Contract for Project No. 2014-05, 'Sidewalk Repairs at Various Locations' and Rejecting all other Bids"

RECOMMENDATION: Adopt City Council Resolution No. 2014-79:

- I. Awarding the Construction Contract for Project No. 2014-05, "Sidewalk Repairs at Various Locations" to Hardy & Harper Inc. of Santa Ana, California in the amount of \$73,905.00 and allowing a 10% contingency of \$7,390.50.
- II. Authorizing the Administrative Services Director to approve change orders within the 10% contingency.

JUSTIFICATION: Hardy & Harper Inc. is the lowest responsive and responsible bidder to construct Project No. 2014-05, "Sidewalk Repairs at Various Locations."

BACKGROUND: As the overall age of sidewalk increases, portions of raised, cracked or sunken sidewalks are more common throughout the City. Typically, staff identifies and compiles a list of the locations that need repair by requests and/or complaints submitted by citizens to the City and observation by the City's field staff. The Public Works Department staff inspects the locations and compiles a priority list based on the extent of the damage and the required work to make the repair. The scope of work for Project No. 2014-05, "Sidewalk Repairs at Various Locations" includes the removal and repairs of sidewalks, handicap ramps, curb and gutters and spandrels in order to improve and maintain safe pedestrian travel.

The Public Works staff advertised a "Notice Inviting to Bid", as shown attached on Exhibit "A", on October 17, 2014 and October 24, 2014 for Project No. 2014-05, "Sidewalk Repairs at Various Locations." On October 28, 2014 the City Clerk received three (3) bids and publicly opened and read out loud the following results:

| <u>Contractor</u> | <u>Total Bid</u> |
|--|------------------|
| 1. Hardy & Harper Inc., Santa Ana, CA | \$73,905.00 |
| 2. ND Electrical Construction, Inc., Anaheim, CA | \$81,184.00 |
| 3. Vido Samarzich, Inc., Alta Loma, CA | \$91,750.00 |

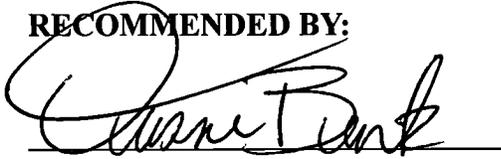
The complete bid schedules for each contractor are attached hereto as Exhibits "B - D." A summary of bids received is attached hereto as Exhibit "E."

After review of the bid documents, submitted by Hardy & Harper Inc., staff found that they are the lowest responsible and responsive bidder, and therefore recommend awarding the contract to Hardy & Harper Inc. in the amount of \$73,905.00. If awarded, the project will commence in January, 2015 and will take approximately 30 working days to complete.

STRATEGIC PLAN: Project 2014-05, "Sidewalk Repairs at Various Locations" meets Strategic Plan Goal No. 3 "Infrastructure and City Facilities."

FISCAL DATA: The cost of Project 2014-05, "Sidewalk Repairs at Various Locations" is 73,905.00. Staff requests the approval of a 10% contingency equal to \$7,390.50. Funds are currently available in FY 2014/2015 Measure A Fund, therefore an appropriation is not required.

RECOMMENDED BY:



Duane Burk
Director of Public Works

REVIEWED BY:

June Overholt
Administrative Services Director
Interim City Manager

APPROVED BY:



Homer Croy
Interim City Manager

RESOLUTION NO. 2014-79

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AWARDING THE CONSTRUCTION CONTRACT FOR PROJECT NO. 2014-05, "SIDEWALK REPAIRS AT VARIOUS LOCATIONS" AND REJECTING ALL OTHER BIDS

WHEREAS, the Public Works Department has identified locations of aging sidewalks and handicap ramps that are in need of repair in order to maintain a safe path of travel for pedestrians; and

WHEREAS, the scope of work for Project No. 2014-05, "Sidewalk Repairs at Various Locations" includes the removal and repairs of sidewalks, handicap ramps, curb and gutters and spandrels in order to improve and maintain safe pedestrian travel; and

WHEREAS, a Notice Inviting Bids was advertised on October 17, 2014 and October 24, 2014, as shown attached as Exhibit "A", and three (3) bids were received and opened on October 28, 2014 (shown as Exhibit "B"); and

WHEREAS, Hardy & Harper Inc. of Santa Ana, California is the lowest responsive and responsible bidder to construct Project No. 2014-05, "Sidewalk Repairs at Various Locations."

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning as follows:

SECTION 1. City Council adopts Resolution No. 2014-79 awarding the Construction Contract for Project No. 2014-05, "Sidewalk Repairs at Various Locations" to Hardy & Harper Inc. of Santa Ana, California for an amount of \$73,905.00 and allowing a 10% contingency of \$7,390.50 and rejecting all other bids.

SECTION 2. The Administrative Services Director is authorized to approve change orders within the 10% contingency of \$7,390.50.

SECTION 3. The City Manager is authorized to execute the contract agreements for Project No. 2014-05, "Sidewalk Repairs at Various Locations." This authorization will be rescinded if the contract agreements are not executed within sixty (60) days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 12th day of November, 2014.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk

APPROVED AS TO FORM AND
LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2014-05, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of November, 2014.

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, City Clerk
City of Banning, California

EXHIBIT "A"
NOTICE INVITING TO BID

Record Gazette
218 N. Murray St.
Proof of Publication
(2015.5 C.C.P.)

110189 - SIDEWALK REPAIRS

State of California)
County of Riverside) ss.

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer and publisher of Record Gazette, a newspaper published in the English language in the City of Banning, County of Riverside, and adjudicated a newspaper of general circulation as defined by the laws of the state of California by the Superior Court of the County of Riverside, under the date October 14, 1966, Case No. 54737. That the notice, of which the annexed is a copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

October 17, 24, 2014

Executed on: 10/24/2014

At Banning, CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.



Signature

NOTICE INVITING TO BID
PROJECT NO. 2014-05, "SIDEWALK REPAIRS AT VARIOUS LOCATIONS" OWNER: City of Banning PROJECT DESCRIPTION: The scope of work under this project includes removal and reconstruction of existing sidewalk, curb and gutter; handicap ramps and spandrels on various streets in accordance with the City of Banning Standard Specifications. The Contractor must comply with all NPDES requirements to reduce storm water run-off by implementing applicable BMPs, as required by the Public Works Inspector PLANS & SPECS: Specifications will be made available on October 20, 2014, and may be obtained at the Public Works Department, Engineering Division, City of Banning, 99 E. Ramsey Street, Banning, California 92220, by a non-refundable deposit of Twenty Dollars (\$20.00) per set. An additional non-refundable charge of Ten Dollars (\$10.00) to cover the cost of wrapping, handling, and postage will be made for each set of Contract Documents mailed. NON-MANDATORY PRE-BID CONFERENCE October 23, 2014 at 2:30 p.m. at City Hall, 99 E. Ramsey St., Banning, CA, 92220. REQUIREMENTS: Prevailing Wage, Certified Payroll, Bid Bond, Payment and Performance Bond, Insurance, etc., per the approved specifications. Pursuant to the provisions of Public Contract Code Section 3300, the City has determined that the Contractor shall possess a valid Class A and/or C-8 license at the time that the Contract is awarded. Failure to possess the specified license shall render the bid as not responsible and/or non-responsive and shall act as a bar to award the Contract to any bidder not possessing said license at the time of award. SEALED BIDS DUE: October 28, 2014 and Opened Publicly at 11:00 a.m. local time, at the above City Hall address, Attn: City Clerk. CITY OF BANNING, CALIFORNIA
Dated: 10/08/2014
Publication Date: 10/17/2014
10/24/2014
/s/ Marie A. Calderon
City Clerk
Published in The Record
Gazette
No. 110189
10/17, 24, 2014

EXHIBIT "B"
HARDY & HARPER INC.
SANTA ANA, CA
BID PACKET

SECTION 1.3
OF
PROCEDURAL DOCUMENTS

BID

Proposal of Hardy & Harper, Inc.,
hereinafter called "Bidder", organized and existing under the laws of the State of California,
doing business as a Corporation

* insert "a corporation", "a partnership", or "an individual", as applicable.

To the CITY OF BANNING, hereinafter called "Owner":

In compliance with your Invitation for Bids and Instruction to Bidders, Bidder hereby proposes to perform all work for the **PROJECT NO. 2014-05, "SIDEWALK REPAIRS AT VARIOUS LOCATIONS"** in strict accordance with the Contract Documents, within the time set forth therein, and at the prices stated below.

By submission of this Bid, the Bidder certifies, and in the case of a joint Bid each party thereto certifies as to his own organization that this Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this Bid with any other Bidder or with any competitor.

The Bidder hereby agrees that the Owner shall have a period of forty-five (45) calendar days after opening of Bids within which to accept or reject the Bids.

The Bidder agrees to commence work under this Contract on or before a date to be specified in the Notice to Proceed and to fully complete the Contract within a total of **Thirty (30) working days** thereafter.

The Bidder agrees that if the project is not fully completed within said time, he shall pay, as liquidated damages, the sum of **\$750.00** for each calendar day thereafter as provided in the General Conditions, and that this amount shall be presumed to be the amount of damages sustained by Owner in the event of such a breach by the Bidder, as it would be impractical or extremely difficult to fix the actual damage.

PROJECT NO. 2014-05, "SIDEWALK REPAIRS AT VARIOUS LOCATIONS"

BID SCHEDULE I

| ITEM NO. | DESCRIPTION OF ITEM | ESTIMATED QUANTITY | | UNIT PRICE | TOTAL |
|----------|---|--------------------|----|---------------------|--------|
| 1. | Clearing and Grubbing | LS | LS | 7,500 | 7,500 |
| 2. | Traffic Control | LS | LS | 1,800 | 1,800 |
| 3. | Remove and Reconstruct Sidewalk per City of Banning Standard C-213 | 2,800 | SF | 11.00 ⁵⁰ | 32,200 |
| 4. | Remove and Reconstruct Type "A" (6") Curb/Gutter per City of Banning Standard C-200 | 135 | LF | 59.00 | 7,965 |
| 5. | Remove and Reconstruct Type "B" (8") Curb/Gutter per City of Banning Standard C-201 | 120 | LF | 61.00 | 7,320 |
| 6. | Remove and Reconstruct Driveway Approach per City of Banning Standard C-207 | 180 | SF | 14.00 | 2,520 |
| 7. | Remove and Reconstruct Spandrel per City of Banning Standard C-211 | 250 | SF | 20.00 | 5,000 |
| 8. | Remove and Reconstruct Access Ramp per City of Banning Standard C-214 | 4 | EA | 2,400 | 9,600 |

*see Appendix for specific locations.

BID AMOUNT IN FIGURES - SCHEDULE I: \$ 73,905

BID AMOUNT IN WORDS - SCHEDULE I: Seventy-three thousand nine hundred five

SUMMARY

TOTAL BID AMOUNT IN FIGURES - SCHEDULE I:

\$ 73,905

TOTAL BID AMOUNT IN WORDS - SCHEDULE I:

Seventy-three thousand nine hundred five

NOTE: The City of Banning reserves the right to reduce quantities without a change in the Contractor's Bid Prices, due to a possible reduction in funding, at the time of contract award.

ADDENDA

The Bidder acknowledges receipt of the following Addenda:

Addendum No.: _____ DATED: _____

Addendum No.: _____ DATED: _____

Addendum No.: _____ DATED: _____

NOTE: All addenda shall be signed by the Bidder and submitted with the Bid package.

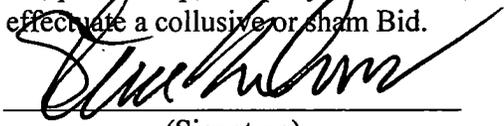
NON COLLUSION AFFIDAVIT

STATE OF CALIFORNIA

COUNTY OF Orange

Hardy & Harper, Inc., being first duly sworn, the party making the
(Name of Bidder)

foregoing Bid; that the Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Bid is genuine and not collusive or sham; that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham Bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham Bid, or that anyone shall refrain from bidding; that the Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid price of the Bidder or any other Bidder, or to fix any overhead, profit or cost element of the Bid price, or of that of any other Bidder, or to secure any advantage against the public body awarding the Contract of anyone interested in the proposed contract; that all statements contained in the Bid are true; and, further, that the Bidder has not directly or indirectly, submitted his or her Bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, Bid depository, or to any member or agent thereof to effectuate a collusive or sham Bid.



(Signature)

Steve Kirschner, Vice President

(Typed Name)

SUBSCRIBED BEFORE ME on this _____ day of _____, 2014.

Notary Public

My commission Expires:

** See Attached Notarial Jurat from the Contractor.*

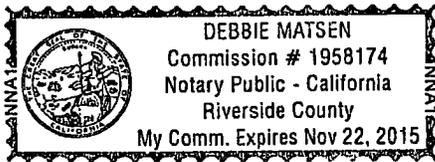
**CALIFORNIA JURAT WITH AFFIANT STATEMENT
GOVERNMENT CODE § 8202**

- See Attached Document (Notary to cross out lines 1-6 below)
 See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____
Signature of Document Signer No. 1 *Signature of Document Signer No. 2 (if any)*

State of California
County of Orange

Subscribed and sworn to (or affirmed) before me
on this 24th day of October, 2014,
by *Date* *Month* *Year*
(1) Steve Kirschner
(2) _____
Name(s) of Signer(s)



Place Notary Seal Above

proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.

Signature *Debbie Matsen*
Signature of Notary Public

OPTIONAL

*Though this section is optional, completing this information can deter alteration of the document
or fraudulent reattachment of this form to an unintended document.*

Description of Attached Document

Title or Type of Document: Non Collusion Affidavit
Document Date: _____ Number of Pages: 1
Signer(s) Other Than Named Above: None.

BID SECURITY OR BOND

There is enclosed herewith Bid security or bond in the following form (check one):

- Cash (10%)
- Cashier's Check or Certified Check (10%)
- Bond - 1 Surety (10%)

in the sum of 10% () percent of the base Bid of _____ (~~\$~~), made payable to the order of the City of Banning, and the undersigned agrees that in case of his failure to execute the necessary Contract and furnish the required bonds and insurance certificates, the cashier's check or surety bond and the money payable thereon shall be and remain the property of the CITY OF BANNING.

WITHDRAWAL OF BID

The Bidder agrees that this Bid shall be good and may not be withdrawn for a period of forty-five (45) calendar days after the scheduled closing time for receiving Bids.

VISITING THE SITE

The undersigned has thoroughly examined the Drawings and Specifications and Addenda (if any), has visited the site, and is thoroughly familiar with the contents and all of the conditions thereof. The undersigned is aware of, and will observe, all security regulations enforced at this facility.

DESIGNATION OF SUBCONTRACTORS

In compliance with the provisions of Section 4100 - 4108 of the Public Contract Code of the State of California, and any amendments thereto, each Bidder shall set forth below, the name and location of the mill, shop, or office of each subcontractor who will perform work or labor, or render service to the Contractor in an amount in excess of one-half (1/2) of one (1) percent of the total Bid to be performed under the Contract, he shall be deemed to have agreed to perform such portion himself and he shall not be permitted to subcontract that portion of the work except under conditions permitted by law.

LIST OF SUBCONTRACTORS

Subletting or subcontracting of any portion of the work as to which no subcontractor was designated in the original Bid shall only be permitted in case of public emergency or necessity, or otherwise permitted by law, and then only after a finding reduced to writing as a public record of the Owner.

LIST OF SUBCONTRACTORS

| | | |
|-----------------------------------|----------------------------------|--|
| NAME: <i>No subcontractors</i> | License No and Classification | DBE/MBE __Yes __No |
| ADDRESS: | Telephone: Fax: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

| | | |
|------------|----------------------------------|--|
| NAME: | License No and Classification | DBE/MBE __Yes __No |
| ADDRESS: | Telephone: Fax: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

| | | |
|------------|----------------------------------|--|
| NAME: | License No and Classification | DBE/MBE __Yes __No |
| ADDRESS: | Telephone: Fax: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

LIST OF SUBCONTRACTORS - cont.

| | | |
|------------|----------------------------------|--|
| NAME: | License No and Classification | DBE/MBE __Yes __No |
| ADDRESS: | Telephone: Fax: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

| | | |
|------------|----------------------------------|--|
| NAME: | License No and Classification | DBE/MBE __Yes __No |
| ADDRESS: | Telephone: Fax: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

| | | |
|------------|----------------------------------|--|
| NAME: | License No and Classification | DBE/MBE __Yes __No |
| ADDRESS: | Telephone: Fax: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

LIST OF MATERIAL SUPPLIERS

| | | |
|--|---|---|
| NAME: <i>Robertsons Ready Mix</i> | MATERIAL(S) TO BE SUPPLIED <i>Concrete</i> | |
| ADDRESS: <i>2000 S Mainstreet Corona CA 92882</i> | Telephone: <i>951-443-6500</i> | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: <i>Corona CA 92882</i> | Bid Item No. <i>3-8</i> | % of Total Bid <i>13 %</i> |

| | | |
|--|--|---|
| NAME: <i>Vulcan Materials</i> | MATERIAL(S) TO BE SUPPLIED <i>Asphalt</i> | |
| ADDRESS: <i>11447 Tuxford st.</i> | Telephone: <i>818 767 7119</i> | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: <i>Sun Valley CA 91352</i> | Bid Item No. <i>3-8</i> | % of Total Bid <i>2 %</i> |

| | | |
|------------|----------------------------|--|
| NAME: | MATERIAL(S) TO BE SUPPLIED | |
| ADDRESS: | Telephone: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

LIST OF MATERIAL SUPPLIERS - cont.

| | | |
|------------|----------------------------|---|
| NAME: | MATERIAL(S) TO BE SUPPLIED | |
| ADDRESS: | Telephone: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

| | | |
|------------|----------------------------|---|
| NAME: | MATERIAL(S) TO BE SUPPLIED | |
| ADDRESS: | Telephone: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

| | | |
|------------|----------------------------|---|
| NAME: | MATERIAL(S) TO BE SUPPLIED | |
| ADDRESS: | Telephone: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

LIST OF MANUFACTURERS

The Contractor shall submit this sheet with his Bid, completed, to list the manufacturers of materials he intends to use. It shall be understood that where the Contractor elects not to use the material manufacturers called for in the Specifications he will substitute only items of equal quality, durability, functional character and efficiency as determined by the Engineer. The Contractor should ascertain prior to bidding the acceptability of substitutes. Only one manufacturer shall be listed for each item.

| <u>Item or Material</u> | <u>Manufacturer</u> |
|-------------------------|-------------------------|
| _____ | <u>No Manufacturers</u> |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

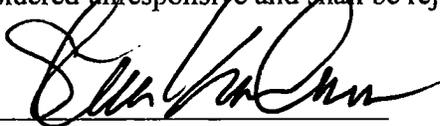
No change shall be allowed of any material manufacturer listed above after receipt of Bids unless the manufacturer so listed cannot furnish materials meeting the specifications. Should such change be allowed, there will be no increase in the amount of the Bid originally submitted.

ANTI-TRUST CLAIM

In submitting a Bid to a public purchasing body, the Bidder offers and agrees that if the Bid is accepted, it will assign to the purchasing body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, materials, or services by the Bidder for sale to the purchasing body pursuant to the Bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Bidder.

DECLARATION OF ACCURACY

I, the undersigned, declare under penalty of perjury that the information presented in this Bid, including without limitation the Contractor's license number and expiration date, are true and correct to the best of my knowledge. Any Bid not signed by the Bidder, or not containing the Bidder's license number and license expiration date, or containing information which is subsequently proven false, shall be considered unresponsive and shall be rejected.



Signature

Steve Kirschner

Vice President

Title

1312 East Warner Avenue

Address

Santa Ana, CA 92705

City, State, Zip

October 22, 2014

Date

714-444-1851

Telephone

215952

Contractor's License No.

A, C8, C12

Type of License

95-2251022

Federal ID No. (If applicable)

12/31/15

Expiration Date of License

(SEAL - if Bid is by a corporation)

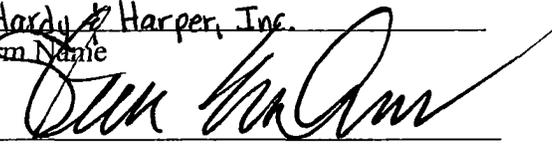
ATTEST

CERTIFICATION
LABOR CODE - SECTION 1861

I, the undersigned Contractor, am aware of the provisions of Section 3700 et. Seq. of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing with the performance of the Work of this Contract.

The Contractor agrees to utilize federal job classifications for the submittal of the certified payrolls and further agrees to pay all of its employees the higher of the prevailing state or federal wages.

CONTRACTOR:

Hardy & Harper, Inc.
Firm Name

By Steve Kirschner
Vice President
Title

QUESTIONNAIRE REGARDING BIDDERS

Number of years engaged in the contracting business under present business name _____
67

List of at least the last three contracts performed which show experience in working on a project of a nature similar to that covered in this proposal. If none, so indicate. Attach separate list of references if necessary.

See Attachment B

| Year | Type of Work | Contract Amt. | Location | Contact person/phone |
|------|--------------|---------------|----------|----------------------|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |

Please check applicable box concerning the ownership of your business:

- (1) American Indian or Alaska Native
- (2) Asian or Pacific Islander
- (3) Black
- (4) Hispanic
- (5) White
- (6) Female
- (7) Other (Specify) _____

State of California Contractor's License No.: 215952

Contractor's License Expiration Date: 12/31/15

Public Works References 2013/2014

Attachment B
Hardy & Harper, Inc.

| Owner/ Agency | Contact | Project (Amount & Completion Date) |
|--|--|--|
| City of Riverside 3905 Main Street Riverside, CA 92552 | Steve Howard (951)826-5708 | Arterial Streets Maintenance \$4,444,000.00 03/14 Minor Street Maintenance Phase 1 \$1,543,000.00 04/14 |
| County of Riverside 3525 14 th Street Riverside, CA 92501 | Trai Nguyen (951)961-5363 | Murrieta Hot Springs Road \$1,305,000.00 04/14 Estelle & Grant Street Surfacing \$838,000.00 03/14 |
| City of Westminster 8200 Westminster Blvd. Westminster, CA 92683 | Tuan Pham tpham@westminster-ca.gov (714)548-3456 | Brookhurst St. \$1,116,920.00 12/13 |
| County of San Bernardino 825 East Third Street San Bernardino, CA 92415 | J.D. Gayman (909)387-7924 | San Bernardino Ave. \$1,577,000.00 06/14 Wagon Train Road \$202,000.00 05/14 Running Springs School Road \$430,730.00 05/14 |

| | | |
|--|---|--|
| City of Pasadena 100 N. Garfield Ave. Pasadena, CA 91109 | Richard Yee (626)744-4643 | Preventive Street Maintenance \$1,558,717.00 06/14 |
| City of Perris 101 North "D" Street Perris, CA 92570 | Brad Brophy (951)943-6504 | Mapes Road/ Gilmore Road \$380,000.00 03/14 |
| City of La Mirada 13700 La Mirada Blvd. La Mirada, CA 90638 | Gary Sanui gsanui@cityoflamirada.org (562) 943-0131 | Phase 3 Street Rehab \$1,075,484.00 06/14 |

SECTION 1.4
OF
PROCEDURAL DOCUMENTS

OCT 22 2014

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned,
Hardy & Harper, Inc., as Principal, and ^{Fidelity and Deposit Company} of Maryland, as Surety, are
hereby held and firmly bound unto the CITY OF BANNING as Owner in the penal sum of _____
Ten Percent of Amount Bid (10%)

for payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our
successors, and our assigns.

Signed this 21st day of October, 2014. The Condition of the above
obligation is such that whereas the Principal has submitted to the CITY OF BANNING a certain Bid,
attached hereto and hereby made a part hereof to enter into a contract in writing for **PROJECT NO.
2014-05, "SIDEWALK REPAIRS AT VARIOUS LOCATIONS."**

NOW, THEREFORE,

- A. If said Bid shall be rejected, or
- B. If said Bid shall be accepted and the Principal shall execute and deliver, within fifteen
(15) days after the Notice of Award, a Contract in the form attached hereto (properly
completed in accordance with said Bid) and shall furnish a Bond for his faithful
performance of said Contract and for the payment of all persons performing labor or
furnishing materials in connection therewith, the required Insurance Certificates, and
shall in all other respects perform the agreement created by the acceptance of said Bid,
then this obligation shall be void, otherwise the same shall remain in force and effect; it
being expressly understood and agreed that the liability of the Surety for any and all
claims thereunder shall, in no event, exceed the penal amount of this obligation as herein
stated.

The Surety, for value received, hereby stipulates and agrees that the obligation of said Surety and its
Bond shall be in no way impaired or affected by any extension of the time within which the Owner may
accept such Bid; and said Surety does hereby waive notice of any such extension.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall
pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the
court.

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IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Two Witnesses

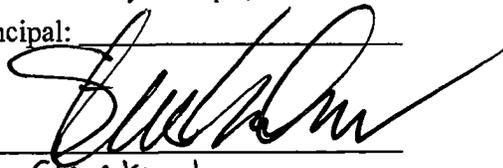
(If Individual):

Hardy & Harper, Inc.

Principal: _____

By _____

Title _____



Steve Hirschner

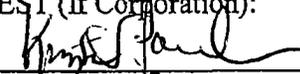
Vice President

ATTEST (If Corporation):

By _____

Title _____

(Corporate Seal)



Kristen S. Paulino

Corporate Secretary

Fidelity and Deposit Company
SURETY: of Maryland

By: _____

Title _____

Dwight Reilly

Attorney-in-Fact

ATTEST:

By _____

Title _____

(Corporate Seal)

IMPORTANT: Surety companies executing Bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance as defined in Section 105 of the California Insurance Code.

Any claims under this bond may be addressed to:

(Name and Address of Surety) Fidelity and Deposit Company of Maryland
777 South Figueroa Street, Suite 3900
Los Angeles, CA 90017

(Name and address of Agent or Representative in California, if different from above) Commercial Surety Bond Agency
1411 N. Batavia St., Suite 201
Orange, CA 92867

(Telephone number and address of Surety and Agent or Representative in California) (213) 270-0600 Surety
(714) 516-1232 Agent

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ACKNOWLEDGMENT

State of California
County of Orange)

On October 21, 2014 before me, Susan Pugh, Notary Public
(insert name and title of the officer)

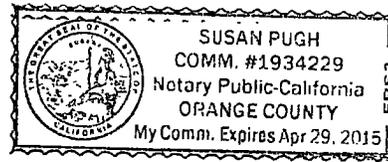
personally appeared Dwight Reilly
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in
his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Susan Pugh*
Susan Pugh

(Seal)



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
CIVIL CODE § 1189**

State of California

County of Orange }

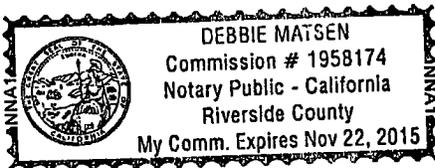
On October 24, 2014 before me, Debbie Matsen, Notary Public
Date Name and Title of the Officer

personally appeared Steve Kirschner and Kristen S. Paulino
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature: Debbie Matsen
Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Bid Bond Document Date: October 21, 2014

Number of Pages: 3 Signer(s) Other Than Named Above: Dwight Reilly

Capacity(ies) Claimed by Signer(s)

Signer's Name: Steve Kirschner

- Corporate Officer — Title(s): Vice President
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer's Name: Kristen S. Paulino

- Corporate Officer — Title(s): Corporate Secretary
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: Hardy & Harper, Inc.

Signer Is Representing: Hardy & Harper, Inc.

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by THOMAS O. MCCLELLAN, Vice President, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint Daniel HUCKABAY, Dwight REILLY, Andrew WATERBURY and Arturo AYALA, all of Orange, California, EACH its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: any and all bonds and undertakings, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 22nd day of May, A.D. 2014.

ATTEST:

ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND



By: Eric D. Barnes
Assistant Secretary
Eric D. Barnes

Thomas O. McClellan
Vice President
Thomas O. McClellan

State of Maryland
City of Baltimore

On this 22nd day of May, A.D. 2014, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, THOMAS O. MCCLELLAN, Vice President, and ERIC D. BARNES, Assistant Secretary, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Constance A. Dunn

Constance A. Dunn, Notary Public
My Commission Expires: July 14, 2015



STATE OF CALIFORNIA

DEPARTMENT OF INSURANCE

SAN FRANCISCO

Amended

Certificate of Authority

THIS IS TO CERTIFY, That, pursuant to the Insurance Code of the State of California,

Fidelity and Deposit Company of Maryland

of Baltimore, Maryland, organized under the laws of Maryland, subject to its Articles of Incorporation or other fundamental organizational documents, is hereby authorized to transact within this State, subject to all provisions of this Certificate, the following classes of insurance: Fire, Marine, Surety, Plate Glass, Liability, Workers' Compensation, Common Carrier Liability, Boiler and Machinery, Burglary, Credit, Sprinkler, Team and Vehicle, Automobile, Aircraft, and Miscellaneous as such classes are now or may hereafter be defined in the Insurance Laws of the State of California.

THIS CERTIFICATE is expressly conditioned upon the holder hereof now and hereafter being in full compliance with all, and not in violation of any, of the applicable laws and lawful requirements made under authority of the laws of the State of California as long as such laws or requirements are in effect and applicable, and as such laws and requirements now are, or may hereafter be changed or amended.

IN WITNESS WHEREOF, effective as of the 29th day of January, 1985, I have hereunto set my hand and caused my official seal to be affixed this 29th day of January, 1985.

Fee \$50.00

Rec. No. SA314

Filed 12/3/84

Bruce Bumer Insurance Commissioner

By Certification

Victoria S. Sidbury Deputy

I, the undersigned Insurance Commissioner of the State of California, do hereby certify that I have compared the above copy of Certificate of Authority with the duplicate of original now on file in my office, and that the same is a full, true, and correct transcript thereof, and of the whole of said duplicate, and said Certificate of Authority is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and caused my official seal to be affixed this 3rd day of August, 2001.

I. Clark Kelso Acting Insurance Commissioner

Pauline D'Andrea Deputy

EXHIBIT "C"

ND ELECTRICAL CONSTRUCTION, INC.

ANAHEIM, CA

BID PACKET

SECTION 1.3
OF
PROCEDURAL DOCUMENTS

BID

Proposal of ND Electrical Construction, Inc.,
hereinafter called "Bidder", organized and existing under the laws of the State of California,
doing business as a corporation

* insert "a corporation", "a partnership", or "an individual", as applicable.

To the CITY OF BANNING, hereinafter called "Owner":

In compliance with your Invitation for Bids and Instruction to Bidders, Bidder hereby proposes to perform all work for the **PROJECT NO. 2014-05, "SIDEWALK REPAIRS AT VARIOUS LOCATIONS"** in strict accordance with the Contract Documents, within the time set forth therein, and at the prices stated below.

By submission of this Bid, the Bidder certifies, and in the case of a joint Bid each party thereto certifies as to his own organization that this Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this Bid with any other Bidder or with any competitor.

The Bidder hereby agrees that the Owner shall have a period of forty-five (45) calendar days after opening of Bids within which to accept or reject the Bids.

The Bidder agrees to commence work under this Contract on or before a date to be specified in the Notice to Proceed and to fully complete the Contract within a total of **Thirty (30) working days** thereafter.

The Bidder agrees that if the project is not fully completed within said time, he shall pay, as liquidated damages, the sum of **\$750.00** for each calendar day thereafter as provided in the General Conditions, and that this amount shall be presumed to be the amount of damages sustained by Owner in the event of such a breach by the Bidder, as it would be impractical or extremely difficult to fix the actual damage.

PROJECT NO. 2014-05, "SIDEWALK REPAIRS AT VARIOUS LOCATIONS"

BID SCHEDULE I

| ITEM NO. | DESCRIPTION OF ITEM | ESTIMATED QUANTITY | | UNIT PRICE | TOTAL |
|----------|---|--------------------|----|------------|-----------|
| | | | | | |
| 1. | Clearing and Grubbing | LS | LS | 3,301.00 | 3,301.00 |
| 2. | Traffic Control | LS | LS | 3,301.00 | 3,301.00 |
| 3. | Remove and Reconstruct Sidewalk per City of Banning Standard C-213 | 2,800 | SF | 8.90 | 24,920.00 |
| 4. | Remove and Reconstruct Type "A" (6") Curb/Gutter per City of Banning Standard C-200 | 135 | LF | 92.00 | 12,420.00 |
| 5. | Remove and Reconstruct Type "B" (8") Curb/Gutter per City of Banning Standard C-201 | 120 | LF | 92.00 | 11,040.00 |
| 6. | Remove and Reconstruct Driveway Approach per City of Banning Standard C-207 | 180 | SF | 29.00 | 5,220.00 |
| 7. | Remove and Reconstruct Spandrel per City of Banning Standard C-211 | 250 | SF | 29.00 | 7,250.00 |
| 8. | Remove and Reconstruct Access Ramp per City of Banning Standard C-214 | 4 | EA | 3,433.00 | 13,732.00 |

*see Appendix for specific locations.

BID AMOUNT IN FIGURES - SCHEDULE I: \$ 81,184.00

BID AMOUNT IN WORDS - SCHEDULE I: eighty one thousand one hundred eighty four dollars

54,272.90

SUMMARY

TOTAL BID AMOUNT IN FIGURES - SCHEDULE I:

81,184.00

TOTAL BID AMOUNT IN WORDS - SCHEDULE I:

eighty one thousand one hundred
eighty four dollars

NOTE: **The City of Banning reserves the right to reduce quantities without a change in the Contractor's Bid Prices, due to a possible reduction in funding, at the time of contract award.**

ADDENDA

The Bidder acknowledges receipt of the following Addenda:

Addendum No.: _____ DATED: _____

Addendum No.: _____ DATED: _____

Addendum No.: _____ DATED: _____

NOTE: All addenda shall be signed by the Bidder and submitted with the Bid package.

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NON COLLUSION AFFIDAVIT

STATE OF CALIFORNIA

COUNTY OF ORANGE

Michael Martin, President, being first duly sworn, the party making the
(Name of Bidder)

foregoing Bid; that the Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Bid is genuine and not collusive or sham; that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham Bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham Bid, or that anyone shall refrain from bidding; that the Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid price of the Bidder or any other Bidder, or to fix any overhead, profit or cost element of the Bid price, or of that of any other Bidder, or to secure any advantage against the public body awarding the Contract of anyone interested in the proposed contract; that all statements contained in the Bid are true; and, further, that the Bidder has not directly or indirectly, submitted his or her Bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, Bid depository, or to any member or agent thereof to effectuate a collusive or sham Bid

Michael Martin
(Signature)

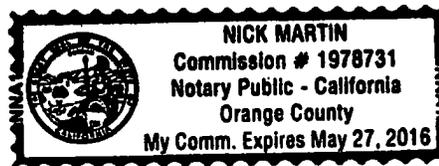
Michael Martin
(Typed Name)

SUBSCRIBED BEFORE ME on this 27th day of October, 2014.

Nick Martin
Notary Public

My commission Expires:

5/27/16



BID SECURITY OR BOND

There is enclosed herewith Bid security or bond in the following form (check one):

- Cash (10%)
- Cashier's Check or Certified Check (10%)
- Bond - 1 Surety (10%)

in the sum of ten (10) percent of the base Bid of eighty one thousand one hundred (\$ 81,184.00), made payable to the order of the City of Banning, and the undersigned agrees that in case of his failure to execute the necessary Contract and furnish the required bonds and insurance certificates, the cashier's check or surety bond and the money payable thereon shall be and remain the property of the CITY OF BANNING.

WITHDRAWAL OF BID

The Bidder agrees that this Bid shall be good and may not be withdrawn for a period of forty-five (45) calendar days after the scheduled closing time for receiving Bids.

VISITING THE SITE

The undersigned has thoroughly examined the Drawings and Specifications and Addenda (if any), has visited the site, and is thoroughly familiar with the contents and all of the conditions thereof. The undersigned is aware of, and will observe, all security regulations enforced at this facility.

DESIGNATION OF SUBCONTRACTORS

In compliance with the provisions of Section 4100 - 4108 of the Public Contract Code of the State of California, and any amendments thereto, each Bidder shall set forth below, the name and location of the mill, shop, or office of each subcontractor who will perform work or labor, or render service to the Contractor in an amount in excess of one-half (1/2) of one (1) percent of the total Bid to be performed under the Contract, he shall be deemed to have agreed to perform such portion himself and he shall not be permitted to subcontract that portion of the work except under conditions permitted by law.

LIST OF SUBCONTRACTORS

Subletting or subcontracting of any portion of the work as to which no subcontractor was designated in the original Bid shall only be permitted in case of public emergency or necessity, or otherwise permitted by law, and then only after a finding reduced to writing as a public record of the Owner.

LIST OF SUBCONTRACTORS

| | | |
|---|--|--|
| NAME: Spartan Concrete & Asphalt Cutting, Inc | License No and Classification 683437 D06 | DBE/MBE __Yes <input checked="" type="checkbox"/> No |
| ADDRESS: 19020 N. Indian Ave., Suite 2H | Telephone: (760) 251-8095 Fax: (760) 251-8253 | Ownership (Circle One) Minority Women <u>Not Applicable</u> |
| City, Zip: Desert Hot Springs, CA 92258 | Bid Item No. Sawcutting - 3,4,5,6,7,8 | % of Total Bid 5% |

| | | |
|-------------------|--|---|
| NAME: | License No and Classification | DBE/MBE __Yes __No |
| ADDRESS: | Telephone: Fax: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

| | | |
|-------------------|--|---|
| NAME: | License No and Classification | DBE/MBE __Yes __No |
| ADDRESS: | Telephone: Fax: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

LIST OF SUBCONTRACTORS - cont.

| | | |
|-----------------|----------------------------------|--|
| NAME: | License No and Classification | DBE/MBE __Yes __No |
| ADDRESS: | Telephone: Fax: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

| | | |
|-----------------|----------------------------------|--|
| NAME: | License No and Classification | DBE/MBE __Yes __No |
| ADDRESS: | Telephone: Fax: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

| | | |
|-----------------|----------------------------------|--|
| NAME: | License No and Classification | DBE/MBE __Yes __No |
| ADDRESS: | Telephone: Fax: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

LIST OF MATERIAL SUPPLIERS

| | | |
|--|---|--|
| NAME: Robertson's | MATERIAL(S) TO BE SUPPLIED Concrete | |
| ADDRESS: 200 S. Main St. Suite 200 | Telephone: (800) 834-7557 | Ownership (Circle One) Minority Women <input type="checkbox"/> Not Applicable |
| City, Zip: Corona, CA 92882 | Bid Item No. 3, 4, 5, 6, 7, 8 | % of Total Bid 10% |

| | | |
|-------------------|-----------------------------------|--|
| NAME: | MATERIAL(S) TO BE SUPPLIED | |
| ADDRESS: | Telephone: | Ownership (Circle One) Minority Women <input type="checkbox"/> Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

| | | |
|-------------------|-----------------------------------|--|
| NAME: | MATERIAL(S) TO BE SUPPLIED | |
| ADDRESS: | Telephone: | Ownership (Circle One) Minority Women <input type="checkbox"/> Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

LIST OF MATERIAL SUPPLIERS - cont.

| | | |
|-------------------|-----------------------------------|--|
| NAME: | MATERIAL(S) TO BE SUPPLIED | |
| ADDRESS: | Telephone: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

| | | |
|-------------------|-----------------------------------|--|
| NAME: | MATERIAL(S) TO BE SUPPLIED | |
| ADDRESS: | Telephone: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

| | | |
|-------------------|-----------------------------------|--|
| NAME: | MATERIAL(S) TO BE SUPPLIED | |
| ADDRESS: | Telephone: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

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LIST OF MANUFACTURERS

The Contractor shall submit this sheet with his Bid, completed, to list the manufacturers of materials he intends to use. It shall be understood that where the Contractor elects not to use the material manufacturers called for in the Specifications he will substitute only items of equal quality, durability, functional character and efficiency as determined by the Engineer. The Contractor should ascertain prior to bidding the acceptability of substitutes. Only one manufacturer shall be listed for each item.

| <u>Item or Material</u> | <u>Manufacturer</u> |
|-------------------------|---------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

No change shall be allowed of any material manufacturer listed above after receipt of Bids unless the manufacturer so listed cannot furnish materials meeting the specifications. Should such change be allowed, there will be no increase in the amount of the Bid originally submitted.

ANTI-TRUST CLAIM

In submitting a Bid to a public purchasing body, the Bidder offers and agrees that if the Bid is accepted, it will assign to the purchasing body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, materials, or services by the Bidder for sale to the purchasing body pursuant to the Bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Bidder.

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DECLARATION OF ACCURACY

I, the undersigned, declare under penalty of perjury that the information presented in this Bid, including without limitation the Contractor's license number and expiration date, are true and correct to the best of my knowledge. Any Bid not signed by the Bidder, or not containing the Bidder's license number and license expiration date, or containing information which is subsequently proven false, shall be considered unresponsive and shall be rejected.

Michael Marto
Signature

2201 E Winston Rd, Suite M
Address

President
Title

Anaheim, CA 92806
City, State, Zip

10/27/14
Date

949-498-1799
Telephone

779970
Contractor's License No.

A, B, C10, C46
Type of License

33-0888618
Federal ID No. (If applicable)

6/30/2016
Expiration Date of License

(SEAL - if Bid is by a corporation)

ATTEST

CERTIFICATION
LABOR CODE - SECTION 1861

I, the undersigned Contractor, am aware of the provisions of Section 3700 et. Seq. of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing with the performance of the Work of this Contract.

The Contractor agrees to utilize federal job classifications for the submittal of the certified payrolls and further agrees to pay all of its employees the higher of the prevailing state or federal wages.

CONTRACTOR:

ND Electrical Construction, Inc.

Firm Name

Michael Martin

By

President

Title

QUESTIONNAIRE REGARDING BIDDERS

Number of years engaged in the contracting business under present business name 25

List of at least the last three contracts performed which show experience in working on a project of a nature similar to that covered in this proposal. If none, so indicate. Attach separate list of references if necessary.

| Year | Type of Work | Contract Amt. | Location | Contact person/phone |
|------|-------------------------------------|---------------|----------------------|--|
| 1 | 2014 Bus stop/concrete improvements | \$194,565 | San Jacinto, CA | Riverside Transit Agency Andy Frost: 951-565-5210 |
| 2 | 2013 Bus stop/concrete improvements | \$173,070 | Coachella Valley, CA | Sunline Transit Agency Anita Petke: 760-343-3456 |
| 3 | 2013 Bus stop/concrete improvements | \$130,000 | Corona, CA | City of Corona Gerardo Sanabria: 951-279-3521 |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |

Please check applicable box concerning the ownership of your business:

- (1) American Indian or Alaska Native
- (2) Asian or Pacific Islander
- (3) Black
- (4) Hispanic
- (5) White
- (6) Female
- (7) Other (Specify) _____

State of California Contractor's License No.: 779970

Contractor's License Expiration Date: 6/30/2016

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SECTION 1.4
OF
PROCEDURAL DOCUMENTS

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, ND Electrical Construction, Inc., as Principal, and Merchants Bonding Company (Mutual), as Surety, are hereby held and firmly bound unto the CITY OF BANNING as Owner in the penal sum of _____
Ten Percent (10%) of Bid Amount,
for payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our successors, and our assigns.

Signed this 22nd day of October, 2014. The Condition of the above obligation is such that whereas the Principal has submitted to the CITY OF BANNING a certain Bid, attached hereto and hereby made a part hereof to enter into a contract in writing for **PROJECT NO. 2014-05, "SIDEWALK REPAIRS AT VARIOUS LOCATIONS."**

NOW, THEREFORE,

- A. If said Bid shall be rejected, or
- B. If said Bid shall be accepted and the Principal shall execute and deliver, within fifteen (15) days after the Notice of Award, a Contract in the form attached hereto (properly completed in accordance with said Bid) and shall furnish a Bond for his faithful performance of said Contract and for the payment of all persons performing labor or furnishing materials in connection therewith, the required Insurance Certificates, and shall in all other respects perform the agreement created by the acceptance of said Bid, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims thereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligation of said Surety and its Bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Two Witnesses

(If Individual):

Principal: ND Electrical Construction, Inc.

By Michael Marts

Title President

ATTEST (If Corporation):

By [Signature]

Title Secretary

(Corporate Seal)

ATTEST:

By [Signature]

Title Janice Martin, Assistant Account Manager

(Corporate Seal)

SURETY: Merchants Bonding Company (Mutual)

By [Signature]

Title Lawrence F. McMahon, Attorney-in-Fact

IMPORTANT: Surety companies executing Bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance as defined in Section 105 of the California Insurance Code.

Any claims under this bond may be addressed to:

(Name and Address of Surety) Merchants Bonding Company (Mutual)
2100 Fleur Drive
Des Moines, IA 50321

(Name and address of Agent or Representative in California, if different from above) Alliant Insurance Services, Inc.
701 B St. 6th FL
San Diego, CA 92101

(Telephone number and address of Surety and Agent or Representative in California) (619) 238-1828
701 B St. 6th FL
San Diego, CA 92101

MERCHANTS
BONDING COMPANY™
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations duly organized under the laws of the State of Iowa (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint, individually,

James Baldassare Jr; Lawrence F McMahon

of San Diego and State of California their true and lawful Attorney-in-Fact, with full power and authority hereby conferred in their name, place and stead, to sign, execute, acknowledge and deliver in their behalf as surety any and all bonds, undertakings, recognizances or other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

TWO MILLION (\$2,000,000.00) DOLLARS

and to bind the Companies thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officers of the Companies, and all the acts of said Attorney-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This Power-of-Attorney is made and executed pursuant to and by authority of the following By-Laws adopted by the Board of Directors of the Merchants Bonding Company (Mutual) on April 23, 2011 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 24, 2011.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 13th day of August, 2014.



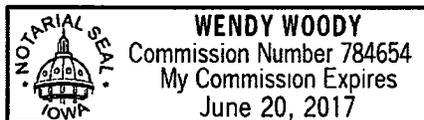
MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*
President

STATE OF IOWA
COUNTY OF POLK ss.

On this 13th day of August, 2014, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument is the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at the City of Des Moines, Iowa, the day and year first above written.



Wendy Woody

Notary Public, Polk County, Iowa

STATE OF IOWA
COUNTY OF POLK ss.

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 22nd day of October, 2014



William Warner Jr.
Secretary

POA 0014 (7/14)

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EXHIBIT "D"
VIDO SAMARZICH, INC.
ALTA LOMA, CA
BID PACKET

SECTION 1.3
OF
PROCEDURAL DOCUMENTS

BID

Proposal of VIDO SAMARZICH, INC.,
hereinafter called "Bidder", organized and existing under the laws of the State of California,
doing business as A CORPORATION

* insert "a corporation", "a partnership", or "an individual", as applicable.

To the CITY OF BANNING, hereinafter called "Owner":

In compliance with your Invitation for Bids and Instruction to Bidders, Bidder hereby proposes to perform all work for the **PROJECT NO. 2014-05, "SIDEWALK REPAIRS AT VARIOUS LOCATIONS"** in strict accordance with the Contract Documents, within the time set forth therein, and at the prices stated below.

By submission of this Bid, the Bidder certifies, and in the case of a joint Bid each party thereto certifies as to his own organization that this Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this Bid with any other Bidder or with any competitor.

The Bidder hereby agrees that the Owner shall have a period of forty-five (45) calendar days after opening of Bids within which to accept or reject the Bids.

The Bidder agrees to commence work under this Contract on or before a date to be specified in the Notice to Proceed and to fully complete the Contract within a total of **Thirty (30) working days** thereafter.

The Bidder agrees that if the project is not fully completed within said time, he shall pay, as liquidated damages, the sum of \$750.00 for each calendar day thereafter as provided in the General Conditions, and that this amount shall be presumed to be the amount of damages sustained by Owner in the event of such a breach by the Bidder, as it would be impractical or extremely difficult to fix the actual damage.

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PROJECT NO. 2014-05, "SIDEWALK REPAIRS AT VARIOUS LOCATIONS"

BID SCHEDULE I

| ITEM NO. | DESCRIPTION OF ITEM | ESTIMATED QUANTITY | | UNIT PRICE | TOTAL |
|----------|---|--------------------|----|------------|-----------|
| | | | | | |
| 1. | Clearing and Grubbing | LS | LS | 20,450.00 | 20,450.00 |
| 2. | Traffic Control | LS | LS | 1,000.00 | 1,000.00 |
| 3. | Remove and Reconstruct Sidewalk per City of Banning Standard C-213 | 2,800 | SF | 10.00 | 28,000.00 |
| 4. | Remove and Reconstruct Type "A" (6") Curb/Gutter per City of Banning Standard C-200 | 135 | LF | 80.00 | 10,800.00 |
| 5. | Remove and Reconstruct Type "B" (8") Curb/Gutter per City of Banning Standard C-201 | 120 | LF | 90.00 | 10,800.00 |
| 6. | Remove and Reconstruct Driveway Approach per City of Banning Standard C-207 | 180 | SF | 15.00 | 2,700.00 |
| 7. | Remove and Reconstruct Spandrel per City of Banning Standard C-211 | 250 | SF | 16.00 | 4,000.00 |
| 8. | Remove and Reconstruct Access Ramp per City of Banning Standard C-214 | 4 | EA | 3,500.00 | 14,000.00 |

*see Appendix for specific locations.

BID AMOUNT IN FIGURES - SCHEDULE I: \$ 91,750.00

BID AMOUNT IN WORDS - SCHEDULE I: NINETY ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS

ADDENDA

The Bidder acknowledges receipt of the following Addenda:

Addendum No.: _____ DATED: _____

Addendum No.: _____ DATED: _____

Addendum No.: _____ DATED: _____

NOTE: All addenda shall be signed by the Bidder and submitted with the Bid package.

BID SECURITY OR BOND

There is enclosed herewith Bid security or bond in the following form (check one):

- Cash (10%)
- Cashier's Check or Certified Check (10%)
- Bond - 1 Surety (10%)

in the sum of 10% (10%) percent of the base Bid of _____ (\$ _____), made payable to the order of the City of Banning, and the undersigned agrees that in case of his failure to execute the necessary Contract and furnish the required bonds and insurance certificates, the cashier's check or surety bond and the money payable thereon shall be and remain the property of the CITY OF BANNING.

WITHDRAWAL OF BID

The Bidder agrees that this Bid shall be good and may not be withdrawn for a period of forty-five (45) calendar days after the scheduled closing time for receiving Bids.

VISITING THE SITE

The undersigned has thoroughly examined the Drawings and Specifications and Addenda (if any), has visited the site, and is thoroughly familiar with the contents and all of the conditions thereof. The undersigned is aware of, and will observe, all security regulations enforced at this facility.

DESIGNATION OF SUBCONTRACTORS

In compliance with the provisions of Section 4100 - 4108 of the Public Contract Code of the State of California, and any amendments thereto, each Bidder shall set forth below, the name and location of the mill, shop, or office of each subcontractor who will perform work or labor, or render service to the Contractor in an amount in excess of one-half (1/2) of one (1) percent of the total Bid to be performed under the Contract, he shall be deemed to have agreed to perform such portion himself and he shall not be permitted to subcontract that portion of the work except under conditions permitted by law.

LIST OF SUBCONTRACTORS

Subletting or subcontracting of any portion of the work as to which no subcontractor was designated in the original Bid shall only be permitted in case of public emergency or necessity, or otherwise permitted by law, and then only after a finding reduced to writing as a public record of the Owner.

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LIST OF SUBCONTRACTORS - cont.

| | | |
|-------------------|----------------------------------|--|
| NAME: | License No and Classification | DBE/MBE __Yes __No |
| ADDRESS: | Telephone: Fax: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

| | | |
|-------------------|----------------------------------|--|
| NAME: | License No and Classification | DBE/MBE __Yes __No |
| ADDRESS: | Telephone: Fax: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

| | | |
|-------------------|----------------------------------|--|
| NAME: | License No and Classification | DBE/MBE __Yes __No |
| ADDRESS: | Telephone: Fax: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

LIST OF MATERIAL SUPPLIERS - cont.

| | | |
|-------------------|-----------------------------------|--|
| NAME: | MATERIAL(S) TO BE SUPPLIED | |
| ADDRESS: | Telephone: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

| | | |
|-------------------|-----------------------------------|--|
| NAME: | MATERIAL(S) TO BE SUPPLIED | |
| ADDRESS: | Telephone: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

| | | |
|-------------------|-----------------------------------|--|
| NAME: | MATERIAL(S) TO BE SUPPLIED | |
| ADDRESS: | Telephone: | Ownership (Circle One) Minority Women Not Applicable |
| City, Zip: | Bid Item No. | % of Total Bid |

DECLARATION OF ACCURACY

I, the undersigned, declare under penalty of perjury that the information presented in this Bid, including without limitation the Contractor's license number and expiration date, are true and correct to the best of my knowledge. Any Bid not signed by the Bidder, or not containing the Bidder's license number and license expiration date, or containing information which is subsequently proven false, shall be considered unresponsive and shall be rejected.

[Handwritten Signature]
Signature

4972 CRESTVIEW PLACE
Address

VICE PRESIDENT
Title

ALTA LOMA CA 91701
City, State, Zip

OCT. 28, 2014
Date

(909) 987-6377
Telephone

433210
Contractor's License No.

"A"
Type of License

95-3811084
Federal ID No. (If applicable)

12/31/2014
Expiration Date of License

(SEAL - if Bid is by a corporation)

ATTEST

[Handwritten Signature]

MONIKA SAMARZICH - SECRETARY

QUESTIONNAIRE REGARDING BIDDERS

Number of years engaged in the contracting business under present business name 23 YEARS

List of at least the last three contracts performed which show experience in working on a project of a nature similar to that covered in this proposal. If none, so indicate. Attach separate list of references if necessary.

| Year | Type of Work | Contract Amt. | Location | Contact person/phone |
|------|----------------------------------|-----------------|----------------------------|----------------------------------|
| 1 | 2014 PIPE/CONCRETE/ PAVING | \$ 525,000.00 | CITY OF POMONA | BRIAN HENSLEE (909) 620-3792 |
| 2 | 2013 CONCRETE/ PAVING | \$ 80,000.00 | CITY OF PASADENA | JEFF KHUN (626) 379-9174 |
| 3 | 2013 PIPE/CONCRETE/ PAVING | \$ 1,100,000.00 | CITY OF MANHATTAN BEACH | TIM SCHEFFER (909) 376-0275 |
| 4 | 2012 CONCRETE/ PAVING | \$ 800,000.00 | CITY OF PASADENA | DALE TORSTENBO (626) 484-5640 |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |

Please check applicable box concerning the ownership of your business:

- (1) American Indian or Alaska Native
- (2) Asian or Pacific Islander
- (3) Black
- (4) Hispanic
- (5) White
- (6) Female
- (7) Other (Specify) _____

State of California Contractor's License No.: 433210

Contractor's License Expiration Date: 12/31/2014

- SEE ATTACHED

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Two Witnesses

(If Individual):

Principal: _____

By _____

Title _____

ATTEST (If Corporation):

By _____

Title _____

(Corporate Seal)

SURETY: _____

By: _____

Title _____

ATTEST:

By _____

Title _____

(Corporate Seal)

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

BOND NO: VIDSA-1386

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, VIDO SAMARZICH, INC., (hereinafter called the Principal), and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation organized and doing business under and by virtue of the laws of the State of MARYLAND, and duly licensed for the purpose of making, guaranteeing or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of CALIFORNIA, as Surety, are held and firmly bound unto CITY OF BANNING, (hereinafter called the obligee) in the sum equal to 10% of the accompanying bid of the Principal, not, however, in excess of TEN PERCENT OF THE TOTAL AMOUNT BID Dollars (10% OF BID AMOUNT), for the payment of which, well and truly to be made, we hereby bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT WHEREAS, the above bounden Principal as aforesaid, is about to hand in and submit to the obligee a bid for the SIDEWALK REPAIRS AT VARIOUS LOCATIONS, in accordance with the plans and specifications filed in the office of the obligee and under the notice inviting proposals therefore.

NOW, THEREFORE, if the bid or proposal of said principal shall be accepted, and the contract for such work be awarded to the principal thereupon by the said obligee, and said principal shall enter into a contract and bond for the completion of said work as required by law, then this obligation to be null and void, otherwise to be and remain in full force and effect.

IN WITNESS WHEREOF, said principal and said Surety have caused these presents to be duly signed and sealed this 27TH day of OCTOBER, 2014.

VIDO SAMARZICH, INC.

BY: _____

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

BY: _____

RANDY SPOHN, Attorney-in-Fact

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA

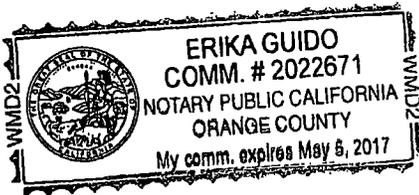
County of ORANGE

On 10/27/2014 before me, ERIKA GUIDO, NOTARY PUBLIC,

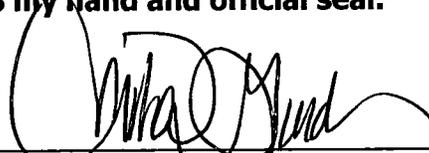
personally appeared RANDY SPOHN

- who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.


Signature of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

| CAPACITY CLAIMED BY SIGNER | DESCRIPTION OF ATTACHED DOCUMENT |
|--|----------------------------------|
| <input type="checkbox"/> INDIVIDUAL | _____ |
| <input type="checkbox"/> CORPORATE OFFICER | _____ |
| <input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED | _____ |
| <input checked="" type="checkbox"/> ATTORNEY-IN-FACT | _____ |
| <input type="checkbox"/> TRUSTEE(S) | _____ |
| <input type="checkbox"/> GUARDIAN/CONSERVATOR | _____ |
| <input type="checkbox"/> OTHER: _____ | _____ |
| SIGNER IS REPRESENTING: | _____ |
| NAME OF PERSON(S) OR ENTITY(IES) | _____ |
| _____ | |
| _____ | |

VIDO SAMARZICH, INC.

General Engineering Contractor No. 433210 A

4972 CRESTVIEW PLACE, ALTA LOMA, CALIFORNIA 91701

TELEPHONE 909-987-6377
FAX 909-987-8988

VIDO SAMARZICH, INC.

MINUTES OF MEETING

OF

BOARD OF DIRECTORS

The Board of Directors of Vido Samarzich, Inc., a California corporation, held a Special Meeting at 4972 Crestview Place, Alta Loma California on January 2, 2002. The following were present, being all members of the Board: Vido Samarzich Sr; Monika Samarzich; Vido Samarzich Jr..

Vido Samarzich Sr. served as Chairman of the meeting, and Monika Samarzich served as secretary.

The Chairman announced that the business of the corporation required that all members of the board be authorized to execute contract documents, including bid documents and any and all other contractual documents which may be required in order for this corporation to bid and enter into contracts to perform construction work and any and all other contractual obligations.

After general discussion and on motion duly made, and seconded and unanimously carried, the following resolution was adopted:

RESOLVED: That the President, Secretary, and Vice President and any one of them, are hereby authorized to execute any and all contractual documents, including bid documents and any and all other contractual documents which may be required in order for this corporation to bid and enter into contract to perform construction work and any and all other contractual obligations on behalf of this corporation, and each and every act of signing by the President, Secretary, or Vice President of such documents is hereby fully assumed and adopted as the act of this corporation.

There being no further business to come before the meeting, upon motion duly made, seconded and unanimously carried, the meeting was adjourned.


Vido Samarzich Sr.-PRESIDENT


Monika Samarzich-SECRETARY

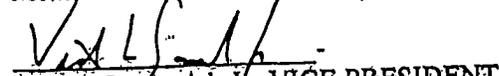

Vido L. Samarzich Jr.-VICE PRESIDENT

EXHIBIT "E"
BID SUMMARY

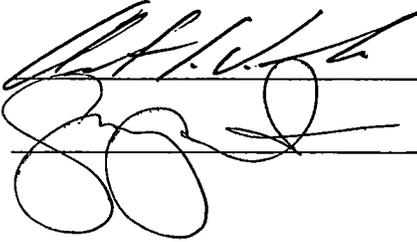
**SUMMARY OF BIDS RECEIVED
CITY OF BANNING**

PROJECT NO. 2014-05

DESCRIPTION: Sidewalk Repairs at Various Locations

BID OPENING DATE: October 28, 2014 **TIME:** 11:00 a.m.

| NAME OF BIDDER: | | | BID BOND | TOTAL BID AMOUNT: |
|---|--|--|-------------|-------------------------|
| ND Electrical Construction, Inc. Anaheim, CA | | | Yes | \$81,184. ⁰⁰ |
| Hardy & Harper, Inc. Santa Ana, CA | | | Yes | \$73,905. ⁰⁰ |
| Vido Samarzich, Inc. Alta Loma, CA | | | Yes | \$91,750. ⁰⁰ |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

VERIFIED BY: 

CITY COUNCIL AGENDA

DATE: November 12, 2014

TO: City Council

FROM: Brian Guillot, Acting Community Development Director

SUBJECT: Resolution No. 2014-73, "Amending the Contract Services Agreement between the City of Banning and the Romo Planning Group"

RECOMMENDATION: That the City Council:

- I. Adopt Resolution No. 2014-73, approving the amendment to the Contract Services Agreement with the Romo Planning Group, Inc. for planning staff services for remainder of the contract period; and
- II. Authorize the City Manager to execute the First Amendment (Attachment A) with Romo Planning Group, Inc. on the form that is approved by the City Attorney; and
- III. Authorize the Administrative Services Director to make necessary budget adjustments for FY 2015.

JUSTIFICATION: The City of Banning is contracted with Romo Planning Group, for planning services as the project manager for the Rancho San Gorgonio Specific Plan review. Presently, the City is experiencing a critical need for planning staff. In order to continue planning services for the public, it is necessary to amend the agreement to provide an interim contract planner.

BACKGROUND/ANALYSIS: Due to recent vacancies in staffing within the Community Development Department, the City sent an informal request for proposals for interim planning services to three consultants that currently are under contract with the City. Requests for proposals were sent to Willdan Engineering, Romo Planning Group, and Placeworks. Of the three consultant firms contacted, only Romo Planning Group responded to the City's request.

On January 14, 2014, the City Council approved Resolution No. 2013-88, authorizing the City Manager to enter into a Professional Services Agreement with Romo Planning Group for project management services (Attachment B). Article 1.10 of the agreement makes provision for additional services should the City require extra work. At this time there is a critical need for planning staff to process entitlement applications and permits, provide planning services to the

public at the counter, and provide typical staff work. Romo Planning Group can meet the City's temporary staffing needs; and, therefore it is recommended that the amendment be approved.

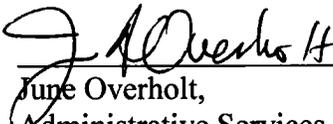
FISCAL DATA: This amendment to the consultant services agreement will be funded through salary savings.

RECOMMENDED BY:



Brian Guillot
Acting Community Development Director

REVIEWED BY:



June Overholt,
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Homer Croy, Interim City Manager

Attachments:

1. Attachment "A" - First Amendment to the Contract Services Agreement between the City of Banning and Romo Planning Group
2. Attachment "B" - Original Contract Services Agreement between the City of Banning and Romo Planning Group
3. Attachment "C" – Copies of request for proposals.

RESOLUTION NO. 2013-77

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF BANNING AND ROMO PLANNING GROUP, INC. FOR ADDITIONAL PLANNING SERVICES

WHEREAS, Planning Division of the Community Development Department processes entitlement applications and permits, provides current and advanced planning services, and provides other related services to the public; and

WHEREAS, due to staff vacancies within the Department there is a critical need for planning services at this time; and

WHEREAS, the City currently contracts with Romo Planning Group for professional project management services for the Rancho San Gorgonio Specific Plan processing; and

WHEREAS, Article 1.10 of the agreement makes provision for additional services should the City require additional professional services.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning as follows:

SECTION 1. The First Amendment to the Contract Services Agreement with Romo Planning Group, Inc. for additional planning services is hereby approved (Attachment A).

SECTION 2. The Administrative Services Director is authorized to make the necessary budget adjustments and appropriations, if needed, to implement the contract for FY 2015.

SECTION 3. The City Manager is authorized to execute the contract amendment with Romo Planning Group, Inc. in a form approved by the City Attorney.

PASSED, APPROVED AND ADOPTED this 12th day of November, 2014.

Deborah Franklin, Mayor
City of Banning

**APPROVED AS TO FORM
AND LEGAL CONTENT:**

David J. Aleshire, City Attorney
Aleshire and Wynder, LLP.

ATTEST:

Marie A. Calderon, City Clerk
City of Banning, California

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2014-73 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 12th day of November, 2014.

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

ATTACHMENT "A"

FIRST AMENDMENT

**FIRST AMENDMENT TO THE CONTRACT SERVICES BY AND BETWEEN THE
CITY OF BANNING, CALIFORNIA AND ROMO PLANNING GROUP, INC.**

THIS FIRST AMENDMENT TO THE CONSULTANT SERVICES AGREEMENT (“First Amendment”) by and between the CITY OF BANNING (“City”) and Romo Planning Group (“Consultant”) is effective as of the _____ day of _____ 2014.

RECITALS

A. City and Consultant entered into an Agreement for Contract Services (“Agreement”) approved by the City Council on October 9, 2013, to provide project management services as fully described in Exhibit “A” of the Agreement entitled Scope of Services.

B. Article 1.10 of the agreement makes provision for Additional Services should they be required.

C. City and Consultant now desire to amend the Agreement to provide Planning services in accordance with section 1.10 *Additional Services* as provided herein.

D. City and Consultant wish to amend the Agreement in accordance with the terms herein.

E. This amendment to the Agreement is made in accordance with Section 9.4 of the Agreement, which provides that “No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council”.

NOW, THEREFORE, it is hereby agreed that the recitals contained above are incorporated herein by reference and the Agreement is hereby amended as follows:

Section 1. Article 1.1 Scope of Services is amended to add temporary planning services in accordance with Exhibit “A”.

Section 2. Article 2.1 Contract Sum is amended to add temporary planning services in accordance with Exhibit “C” and the following:

- I. The City will compensate Contractor for the Services performed upon submission of a valid invoice not more than one time each calendar month. Each invoice shall include:
 - A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
 - B. Line items for all materials and equipment properly charged to the Services.
 - C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
 - D. The Contractor’s billing rates for all personnel are attached as Exhibit “C”.

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Section 3. Article 2.3 Reimbursable Expenses is amended for temporary planning services in that any reimbursable expenses incurred for temporary planning services shall be approved in advance in writing by the Director.

Section 4. Continuing Effect of Agreement. Except as amended by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by this Amendment to the Contractual Services Agreement.

Section 5. Affirmation of Agreement; Warranty Re: Absence of Defaults. City and Contractor each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid and binding obligation.

Contractor represents and warrants to City that, as of the date of this Amendment, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Contractor that, as of the date of this Amendment, Contractor is not in default of any material term of the Agreement and that there have been not events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

Section 6. Adequate Consideration. The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

Section 7. Authority. The person(s) executing this Amendment on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said party is bound

[SIGNATURES ON NEXT PAGE]

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IN WITNESS WHEREOF, City and Contractor have entered into this First Amendment as of the date set forth above.

CITY OF BANNING

By: _____
Homer Croy, Interim City Manager

ATTEST:

By: _____
Marie Calderon, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: _____
Lona N. Laymon, Assistant City Attorney

“CONSULTANT”
THE ROMO PLANNING GROUP, INC.

By: _____
Gustavo J. Romo, Principal/CEO
Address: 2560 N. Los Lomas Way
Covina, CA 91724

ADDENDUM TO EXHIBIT "A"

SCOPE OF SERVICES

RPG (a.k.a., contractor) is currently providing project management services for the San Gorgonio Specific Plan as an extension of City staff. In addition to these services, RPG staff will serve in the capacity of an interim Associate Planner to assist the Community Development Director with all daily tasks necessary to assist staff with the general public, provide counter coverage, process minor and major land use entitlement projects, and perform all duties pertaining to the Associate Planner position as called out in the City of Banning Associate Planner job description (Job Code: 3020).

RPG will utilize the following personnel to accomplish the Services:

- A. Reuben Arceo – to serve as the interim Associate Planner while maintaining role as San Gorgonio Specific Plan Project Manager; and
- B. Marie Gilliam – to serve as back-up interim Associate Planner as City staff determines to be necessary.

ADDENDUM TO EXHIBIT "C"

COST PROPOSAL

For services pertaining to the position of Associate Planner, RPG proposes the following rates:

Associate Planner

| Classification/Personnel | Hourly Rate |
|---|--------------------|
| Associate Planner – Reuben Arceo | \$80.00 |
| Back-up Associate Planner – Marie Gilliam | \$80.00 |

ATTACHMENT "B"

ORIGINAL CONTRACT SERVICES AGREEMENT

**CONTRACT SERVICES AGREEMENT FOR RANCHO SAN
GORGONIO PROJECT MANAGER**

By and Between

**THE CITY OF BANNING,
A MUNICIPAL CORPORATION**

and

THE ROMO PLANNING GROUP, INC.

**AGREEMENT FOR CONTRACT SERVICES
BETWEEN
THE CITY OF BANNING, CALIFORNIA
AND
THE ROMO PLANNING GROUP, INC.
FOR RANCHO SAN GORGONIO PROJECT MANAGER**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 9th day of October, 2013 by and between the City of Banning, a municipal corporation ("City") and The Romo Planning Group, Inc., a California corporation ("Consultant" or "Contractor"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties.". (The term Consultant includes professionals performing in a consulting capacity.)

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough,

competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Consultant's Proposal.

The Scope of Service shall include the Consultant's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Warranty.

Consultant warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Consultant agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Consultant shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Consultant shall act sooner as requested by the City in response to an emergency. In addition, Consultant shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other Consultants) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Consultant's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Consultant shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Consultant. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Consultant for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Consultant agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Consultant fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Consultant's sole expense. Consultant shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

1.8 Prevailing Wages.

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the

performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

1.9 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.10 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Agreement Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed Sixty Thousand Four Hundred Eighty Dollars (\$60,480.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission.

2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Articles 1 and 5, pertaining to indemnification and insurance, respectively.

3.5 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Consultant.

The following principals of Consultant (Principals) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

| | |
|-------------------------------|-----------------------------------|
| <u>Ernest Perea</u> (Name) | <u>Project Manager</u> (Title) |
|-------------------------------|-----------------------------------|

| | |
|--------------------------------|-------------------------------------|
| <u>Tracyi Nelson</u> (Name) | <u>Principal Planner</u> (Title) |
|--------------------------------|-------------------------------------|

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent Consultant of City and shall remain at all times as to City a wholly independent Consultant with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Consultant and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may

not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

 Agent Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant's indemnification liabilities as provided in Section 5.3.

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is

required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnors"), or arising from Consultant's reckless or willful misconduct, or arising from Consultant's indemnors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit "B", Consultant shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Consultant promptly and faithfully performs all terms and conditions of this Agreement.

5.5 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Consultant shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Consultant shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer

shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, subcontractor and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

7.2 Disputes; Default.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the

default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel

specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of _____ (\$_____) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such

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action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF BANNING, a municipal corporation

J. Overholt
June Overholt, Interim City Manager

ATTEST:

Marie A. Calderon
Marie A. Calderon, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

David Aleshire
David Aleshire, City Attorney

CONSULTANT:

THE ROMO PLANNING GROUP, INC.

By: Gustavo J. Romo
Name: GUSTAVO J. ROMO
Title: Principal / CEO

By: _____
Name:
Title:

Address: 2560 N. Las Lomas Way
Covina, CA 91724

Two signatures are required if a corporation.

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.

ACKNOWLEDGMENT

State of California

County of Los Angeles

On September 26, 2013 before me, Cynthia L. Petersen, Notary Public, personally appeared Gustavo J. Romo, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Cynthia L. Petersen (Seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On _____, ____ before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

| CAPACITY CLAIMED BY SIGNER | | DESCRIPTION OF ATTACHED DOCUMENT |
|-----------------------------------|---|---|
| <input type="checkbox"/> | INDIVIDUAL | _____ |
| <input type="checkbox"/> | CORPORATE OFFICER | TITLE OR TYPE OF DOCUMENT |
| | _____ | |
| | TITLE(S) | |
| <input type="checkbox"/> | PARTNER(S) <input type="checkbox"/> LIMITED | _____ |
| | <input type="checkbox"/> GENERAL | NUMBER OF PAGES |
| <input type="checkbox"/> | ATTORNEY-IN-FACT | |
| <input type="checkbox"/> | TRUSTEE(S) | |
| <input type="checkbox"/> | GUARDIAN/CONSERVATOR | _____ |
| <input type="checkbox"/> | OTHER _____ | DATE OF DOCUMENT |
| | _____ | |

SIGNER IS REPRESENTING:
 (NAME OF PERSON(S) OR ENTITY(IES))

 SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"
SCOPE OF SERVICES

I. Consultant will perform the following Services:

- A. Overall Planning Project Management:** provide planning project management for the Rancho San Geronio Project which proposes the development of a master planned community providing a mix of residential, commercial, open space and recreational areas (the "Project"). The Project Manager, listed below in Section V., will be the primary contact for the City and an extension of City staff and will report to the City of Banning Community Development Director.
- B. Project Initiation / Background Research:**
1. Project Kick-Off Meeting (1 meeting)
 2. Background Research
 3. Issue Identification
- C. Specific Plan:**
1. Review Draft Specific Plan
 2. Provide Specific Plan comments to applicant
 3. Review Final Specific Plan
- D. Environmental Impact Report:**
1. Review and comment on technical studies prepared by applicant and/or EIR Consultant.
 2. Oversee and manage the consultants who will prepare the Draft and Final Environmental Impact Report for the project and making sure that the EIR complies with the various timelines and review process in accordance with CEQA Guidelines including filing of the various notices with the State and County.
- E. General Plan Amendment / Zone Change / Tentative Tract Map:** Process and report preparation of any general plan amendment or zone change. Review and process subdivision maps.
- F. Design Review/ Site Plan/ Conditional Use Permit Review:** design plan, site plan, and conditional use permit review.
- G. Development Agreement:** Coordinate the preparation of the Development Agreement with City Attorney's Office.

H. Water Supply Assessment: water supply assessment pursuant to SB 610 and an SB 221 verification of sufficient water supply will be prepared. The EIR will include the assessment and any additional supply information in determining the adequacy of the water supply to support the Project.

I. Meetings:

1. One (1) meeting with Riverside County Airport Land Use Commission (ALUC).
2. Two (2) Planning Commission meetings.
3. Two (2) City Council meetings.
4. The Contractor will provide information and/or attend meetings(s) requested by the Community Development Director as the process moves forward. The Contractor is also responsible for answering questions from the public with regard to the project.

J. Annexation: Coordinate application for annexation with Riverside County Local Agency Formation Commission (LAFCO) on behalf of the City.

K. Regulatory Approvals: coordinate regulatory approval from US Army Corps of Engineers (404 Permit), California Department of Fish and Wildlife (1602 Permit), Regional Water Quality Control Board (401 Certification).

II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:

As part of the entitlement approval process described above, the Contractor is responsible for preparing staff reports and all attachments to the staff report, comments, memos, letters, and public hearing notices. The Project Manager is also responsible for filing of the Notice of Determination with the State and County Clerk.

III. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City apprised of the status of performance by delivering the following status reports:

Bi-weekly status reports.

IV. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.

V. Consultant will utilize the following personnel to accomplish the Services:

A. Earnest Perea, Project Manager

B. Trayci Nelson, Principal Planner

EXHIBIT "B"

**SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)**

- Section 1.7 entitled "Warranty" is hereby deleted in its entirety.
- Section 5.4 entitled "Performance Bond" is hereby deleted in its entirety.
- Section 7.7 entitled "Liquidated Damages" is hereby deleted in its entirety.

EXHIBIT "C"

SCHEDULE OF COMPENSATION

I. Consultant shall perform the following tasks and the following rates:

| TASK DESCRIPTION | PROJECT MANAGER | PRINCIPAL PLANNER | SUB- CONSULTANTS | TOTAL |
|--|--------------------|----------------------|---------------------|-------------|
| | ERNEST PEREA | TRAYCI NELSON | FLAT RATE | |
| Overall Project Management | \$8,400.00 | \$3,520.00 | N/A | \$11,920.00 |
| Project Initiation | \$2,800.00 | \$1,760.00 | N/A | \$4,560.00 |
| Specific Plan Processing | \$2,240.00 | \$660.00 | N/A | \$2,900.00 |
| Environmental Impact Report Processing | \$16,800.00 | \$2,200.00 | **\$3,000.00 | \$22,000.00 |
| GPA / ZC / TTM / DA Processing | \$5,600.00 | \$6,600.00 | N/A | \$12,200.00 |
| Public Hearings | \$1,680.00 | \$1,320.00 | N/A | \$3,000.00 |
| Annexation Processing | \$2,800.00 | \$1,100.00 | N/A | \$3,900.00 |
| Total Cost (Not To Exceed) | \$40,880.00 | \$18,700.00 | \$3,000.00 | \$60,480.00 |

**If necessary

- II. Payments will be made based upon the satisfactory completion of the task.**
- III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.10.**
- VI. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**
- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
 - B. Line items for all materials and equipment properly charged to the Services.

- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.
- V. The total compensation for the Services shall not exceed \$60,480.00, as provided in Section 2.1 of this Agreement.
- VI. The Consultant's billing rates for all personnel are attached as Exhibit C-1.

EXHIBIT "C-1"

CONTRACTOR BILLING RATES

| Classification / Personnel | Hourly Rate |
|--------------------------------------|--------------------|
| Project Manager – Ernest Perea | \$140.00 |
| Principal Planner – Trayci Nelson | \$110.00 |
| Sub-Consultants | |
| Kevin Carr, KPC Environmental | \$100.00 |
| George Writes, Biologist | \$100.00 |
| Jean A. Keller, Ph.D., Archaeologist | \$125.00 |

Notes:

- 1.) Reimbursable direct costs, such as reproduction, supplies, messenger service, long-distance telephone calls, travel, and traffic counts will be billed at cost plus ten percent (10%).
- 2.) Hourly rates apply to work time, travel time, and time spent at public hearings and meetings. For overtime work, the above rates may be increased 50 percent.

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

I. Consultant shall perform all services timely in accordance with the following schedule:

| TASK DESCRIPTION | PERFORMANCE SCHEDULE |
|---|--|
| A. Planning Project Manager: The Project Manager will be an extension of City staff and will report to the City of Banning Community Development Director. The Project Manager will be an extension of City staff and will report to the City of Banning Community Development Director. | On-going |
| B. Project Initiation / Background Research: 1.) Project Kick-Off Meeting (1 meeting) 2.) Background research 3.) Issue identification | B.1) To be determined by City. B.2 and B.3) Within 2 weeks after authorization to start work by City. |
| C. Specific Plan: 1.) Review Draft Specific Plan 2.) Provide Specific Plan comments to applicant 3.) Review Final Specific Plan | C.1 and C.2) Within 2 weeks after submittal of Specific Plan. C.3) Within 2 weeks after re-submittal of Specific Plan by applicant. |
| D. Environmental Impact Report: 1.) Review & comment on technical studies prepared by applicant and/or EIR Consultant. 2.) Oversee and manage the consultants who will prepare the Draft and Final Environmental Impact Report for the project and making sure that the EIR complies with the various timelines and review process in accordance with CEQA Guidelines including filing of the various notices with the State and the County. | D.1) Within 2 weeks after submittal of technical reports. D.2). On-going per agreement between City and EIR Consultant. |

| | |
|--|--|
| <p>E. General Plan Amendment / Zone Change / Tentative Tract Map: Process & report preparation.</p> | <p>Per City directed timelines to be determined.</p> |
| <p>F. Development Agreement: Coordinate the preparation of the Development Agreement with the City Attorney's Office.</p> | <p>Per City directed timelines to be determined.</p> |
| <p>G. Meetings: 1.) Riverside County ALUC (one meeting). 2.) Planning Commission (2 meetings). 3.) City Council (2 meetings). 4.) The Contractor will provide information and/or attend meeting(s) requested by the Community Development Director as the process moves forward. The Contractor is also responsible for answering questions from the public with regard to the project.</p> | <p>G.1) Prior to completion of Draft EIR. G.2) Per City directed timelines. G.3.) Per City directed timelines. G.4) On-going.</p> |
| <p>H. Annexation: Coordinate application with Riverside County LAFCO on behalf of the City.</p> | <p>H.1) 4 to 6 months after a complete set of application materials have been submitted to the LAFCO office.</p> |

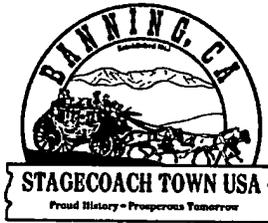
II. Consultant shall deliver the following tangible work products to the City by the following dates.

- A. Staff reports and all attachments, delivery date to be determined.
- B. Written comments, memos and letters, delivery date to be determined.
- C. Public hearing notices, delivery date to be determined.
- D. Notice of Determination including filing with the State and County Clerk, delivery date to be determined based on the City's direction and California Environmental Quality Act (CEQA) requirements.

III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.

ATTACHMENT "C"

COPIES OF REQUEST FOR PROPOSALS



City of Banning

99 E. Ramsey Street · P.O. Box 998 · Banning, CA 92220-0998 · (951) 922-3125 · Fax (951) 922-3128

COMMUNITY DEVELOPMENT
DEPARTMENT

October 7, 2014

Pam Fahy
Placeworks
3 MacArthur Place, Suite 1100
Santa Ana, CA 92707

**Subject: Request for Proposal
Planning Services**

Dear Ms. Fahy:

The City of Banning is seeking a proposal for temporary Planning services to fill a gap in staffing for the City. Specifically, the City is seeking the temporary services of an associate planner as described in the attached job description. The City presently contracts with your firm for consultant services and desires to amend the contract in accordance with Article 1.10, or enter into a separate agreement. The proposal shall include the resume and work experience of the proposed personnel of the Consultant in accordance with Article 4 of the agreement. Please submit a revised Exhibit "A" and revised Exhibit "C" for the amendment proposal along with any additional information that you may require. The normal hours of work will be 7 a.m. to 5 p.m. Monday through Thursday with some additional assignments for the evenings as required for Planning Commission and City Council meetings. If you have any questions, please contact me directly. The proposal shall be submitted to the City no later than **October 15, 2014**, by 2:00 p.m.

Regards,

Brian Guillot
Acting Community Development Director

Attachments:

1. Associate Planner Job Description



City of Banning

99 E. Ramsey Street · P.O. Box 998 · Banning, CA 92220-0998 · (951) 922-3125 · Fax (951) 922-3128

COMMUNITY DEVELOPMENT
DEPARTMENT

October 7, 2014

Gus Romo
Romo Planning Group, Inc.
P.O. Box 4158
Covina, CA 91723

**Subject: Request for Proposal
Planning Services**

Dear Mr. Romo:

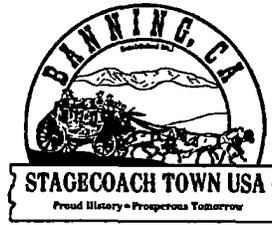
The City of Banning is seeking a proposal for temporary Planning services to fill a gap in staffing for the City. Specifically, the City is seeking the temporary services of an associate planner as described in the attached job description. The City presently contracts with your firm for consultant services and desires to amend the contract in accordance with Article 1.10, or enter into a separate agreement. The proposal shall include the resume and work experience of the proposed personnel of the Consultant in accordance with Article 4 of the agreement. Please submit a revised Exhibit "A" and revised Exhibit "C" for the amendment proposal along with any additional information that you may require. The normal hours of work will be 7 a.m. to 5 p.m. Monday through Thursday with some additional assignments for the evenings as required for Planning Commission and City Council meetings. If you have any questions, please contact me directly. The proposal shall be submitted to the City no later than **October 15, 2014**, by 2:00 p.m.

Regards,

Brian Guillot
Acting Community Development Director

Attachments:

1. Associate Planner Job Description



City of Banning

99 E. Ramsey Street · P.O. Box 998 · Banning, CA 92220-0998 · (951) 922-3125 · Fax (951) 922-3128

COMMUNITY DEVELOPMENT
DEPARTMENT

October 7, 2014

Ron Espalin
Willdan Engineering, Inc.
650 Hospitality Lane, #400
San Bernardino, CA 92408

**Subject: Request for Proposal
Planning Services**

Dear Mr. Espalin:

The City of Banning is seeking a proposal for temporary Planning services to fill a gap in staffing for the City. Specifically, the City is seeking the temporary services of an associate planner as described in the attached job description. The City presently contracts with your firm for consultant services and desires to amend the contract in accordance with Article 1.10, or enter into a separate agreement. The proposal shall include the resume and work experience of the proposed personnel of the Consultant in accordance with Article 4 of the agreement. Please submit a revised Exhibit "A" and revised Exhibit "C" for the amendment proposal along with any additional information that you may require. The normal hours of work will be 7 a.m. to 5 p.m. Monday through Thursday with some additional assignments for the evenings as required for Planning Commission and City Council meetings. If you have any questions, please contact me directly. The proposal shall be submitted to the City no later than **October 15, 2014**, by 2:00 p.m.

Regards,

Brian Guillot
Acting Community Development Director

Attachments:

1. Associate Planner Job Description

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CITY OF BANNING, CALIFORNIA

Associate Planner

Job Code: 3020

FLSA Exempt Non-Exempt

JOB DEFINITION: Under general supervision, performs a variety of duties associated with performing professional, current and/or advanced planning for the City of Banning.

ESSENTIAL FUNCTIONS: *The following duties ARE NOT intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Conducts professional, current and/or advanced planning studies for the City of Banning. Collects and presents data and prepares reports regarding land use, zoning, urban design, population trends, transportation, housing, redevelopment and community service needs for City Council, Planning Commission and Community Development Director. Serves as a project leader for professional and technical personnel. Assists with work instruction or project direction of new staff members. Receives and processes site plan and rezoning permits, plan amendments, use permits, environmental clearance and business licenses. Reviews, investigates and processes plans and applications for subdivisions, housing and commercial developments. Determines conformity with laws, policies, regulations and procedures.

Identifies problems and alternative solutions for planning activities. Administers, interprets and enforces provisions of zoning codes and standards to potential applicants and public. Monitors status of development applications for acceptance to issuance of final permit and conducts periodic reviews of conditional permits. Provides information and assistance to developers, property owners and public. Assists with the review, development or revision of plans, environmental impact reports and ordinances. Compiles, analyzes and interprets data relating to environmental, social, economic, housing, community and demographic trends. Conducts field surveys and investigations.

Performs other duties as assigned or required.

KNOWLEDGE and SKILLS:

- Knowledge of applicable city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of municipal planning trends and concepts.
- Knowledge of statistical analysis and mathematical concepts related to planning.
- Knowledge of terminology, symbols, methods and techniques used in planning and map drafting.

- Skill in reading, understanding, interpreting and applying relevant city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in assessing and prioritizing multiple tasks, projects and/or demands.
- Skill in working within deadlines to complete projects and assignments.
- Skill in assessing, analyzing, identifying and implementing solutions to complex problems.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.
- Skill in operating a personal computer utilizing a variety of software applications.

CITY OF BANNING, CALIFORNIA

Associate Planner

Job Code: 3020

MINIMUM QUALIFICATIONS: A Bachelor's degree in Planning, Business Administration, Public Administration or related field **AND** five (5) years of planning or zoning experience.

ADDITIONAL REQUIREMENTS: Must have at the time of application and must maintain a California driver license.

CITY COUNCIL AGENDA

DATE: November 12, 2014

TO: City Council

FROM: Brian Guillot, Acting Community Development Director

SUBJECT: Airport Land Use Commission (ALUC) report
General Plan Amendment and Zone Change for 18 properties located in a
Neighborhood Bounded by Hargrave, Barbour, Juarez and Westward
Avenue

RECOMMENDATION: That the City Council hear an oral summary of the Riverside County Airport Land Use Commission (ALUC) staff report prepared for the subject project; and, then provide direction to staff regarding amending the application in order to support a finding of consistency from the commission.

JUSTIFICATION: General plan amendments and zone changes are subject to ALUC review in accordance with Public Utilities Code Section 21670-21679.5. Specifically, Countywide Policy 1.5.1 requires the review of general plan amendments and zone changes affecting properties within an airport influence area. The subject properties are located within Zone D of the Riverside County Airport Land Use Compatibility Plan for Banning Municipal Airport.

BACKGROUND/ANALYSIS: On June 10, 2014, the City Council by adoption of Resolution No. 2014-32 directed staff to initiate proceedings for a General Plan Amendment and Zone Change (GPA & ZC) for the subject properties. The staff report to City Council outlined the steps necessary to complete the process that included submitting an application to ALUC in order to obtain a finding of consistency with the Commission's Plan for Banning Municipal Airport. An application was submitted to ALUC on June 25, 2014, and the item was scheduled for the September 11, 2014, commission meeting. Once the ALUC staff report was shared with City staff, a request to continue the item was forwarded to ALUC until this item could be considered again by City Council. ALUC continued the item to the December 11, 2014, regularly scheduled meeting.

The ALUC staff report dated September 11, 2014, recommended a finding of INCONSISTENCY based on the potential for future development and subdivision of the proposed residentially zoned properties. Basically, by rezoning seven of the 18 parcels to Very Low Density Residential (VLDR) the development standards of the zoning ordinance would allow subdivision of the seven existing lots. This is the case because the minimum lot size for the VLDR zoning district is ½ acre (20,000 square feet) and the seven parcels are between 1.88

acres and 2.88 acres. Allowing additional subdivision of residentially zoned properties located within Zone D of the Banning Municipal Airport Compatibility Plan is not consistent with Countywide Policy 3.1.1 and Table 2A that limits the density of residential dwelling units located within Zone D of the plan. However, Countywide Policy 3.3.2 makes provision for existing uses; therefore, the remaining properties would be considered non-conforming and could be found consistent with the plan.

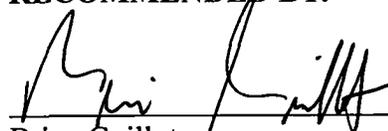
Recommendation

In discussions with ALUC staff, it is proposed that an overlay zone be created for the proposed VLDR zoning district with a limitation on the lot size of 80,000 square feet (about 2 acres). This would allow the VLDR residential development standards to apply to the seven parcels while at the same time preventing further subdivision of the existing lots. ALUC staff agreed that this would be an acceptable solution to the dilemma. Such an overlay zoning district is not unique to the City's zoning regulations as two zoning overlays exist in the northwest quadrant of the City, one with 10,000 square feet minimum lots sizes and the other with 14,000 square feet minimum lot sizes, in the Low Density Residential(LDR) zoning district.

An alternative to creating the VLDR (with 80,000 square feet minimum lot size) overlay zone would be to rezone the area to High Density Residential (HDR). Interestingly, the Countywide Policy would allow this proposal as high density development is considered acceptable in Zone D because the ambient noise levels are characteristically higher.

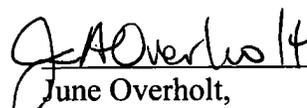
FISCAL DATA: The ALUC application amount was \$2,376.00. It is not anticipated that ALUC will require additional fees in connection with this change to the application.

RECOMMENDED BY:



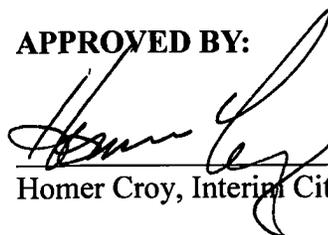
Brian Guillot
Acting Community Development Director

REVIEWED BY:



June Overholt,
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Homer Croy, Interim City Manager

Attachments:

- 1. Exhibit "A" – ALUC Agenda and Staff Report

EXHIBIT "A"

ALUC Agenda and Staff Report



AIRPORT LAND USE COMMISSION RIVERSIDE COUNTY AGENDA

Riverside County Administration Center
4080 Lemon St., 1st Floor Hearing Room ^{SEP 7 2014}
Riverside, California

Thursday 9:00 a.m., September 11, 2014

CHAIR
Simon Housman
Rancho Mirage

VICE CHAIRMAN
Rod Ballance
Riverside

COMMISSIONERS
Arthur Butler
Riverside

Glen Holmes
Hemet

John Lyon
Riverside

Greg Pettis
Cathedral City

Richard Stewart
Moreno Valley

STAFF

Director
Ed Cooper

John Guerin
Russell Brady
Barbara Santos

County Administration Center
4080 Lemon St., 14th Floor
Riverside, CA 92501
(951) 955-5132

www.rcaluc.org

NOTE: If you wish to speak, please complete a "SPEAKER IDENTIFICATION FORM" and give it to the Secretary. The purpose of the public hearing is to allow interested parties to express their concerns. Comments shall be limited to 5 minutes and to matters relevant to the item under consideration. Please do not repeat information already given. If you have no additional information, but wish to be on record, simply give your name and address and state that you agree with the previous speaker(s). Also please be aware that the indicated staff recommendation shown below may differ from that presented to the Commission during the public hearing.

Non-exempt materials related to an item on this agenda submitted to the Airport Land Use Commission or its staff after distribution of the agenda packet are available for public inspection in the Airport Land Use Commission's office located at 4080 Lemon Street, 14th Floor, Riverside, CA 92501 during normal business hours.

In compliance with the Americans with Disabilities Act, if any accommodations are needed, please contact Barbara Santos at (951) 955-5132 or E-mail at basantos@rcaluc.org. Request should be made at least 48 hours or as soon as possible prior to the scheduled meeting.

1.0 INTRODUCTIONS

1.1 CALL TO ORDER

1.2 SALUTE TO FLAG

1.3 ROLL CALL

2.0 PUBLIC HEARING: CONTINUED CASE

FRENCH VALLEY

- 2.1 ZAP1055FV13 – Agate Real Estate C/O Cornerstone Communities (Representative: MDMG, Larry Markham) - County Case Nos. SP00265A1 (Specific Plan Amendment), CZ07806 (Change of Zone), GPA01123 (General Plan Amendment), and TR36546 (Tentative Tract Map). The Specific Plan Amendment proposes to primarily amend the land use designations and boundaries for the proposed Tentative Tract Map to add Medium Density Residential (2-5 dwelling units per acre) and Medium High Density Residential (5-8 dwelling units per acre) land use designations to the Specific Plan for a total of 269 dwelling units. In addition, the Specific Plan Amendment proposes to adjust the boundaries of the Specific Plan to remove areas annexed into the City of Murrieta and purchased for the French Valley Airport, revise the alignment of Borel Road within the Plan boundaries and update Planning Area acreages per more accurate data. The Change of Zone proposes to amend the Specific Plan Zoning ordinance to comply with the proposed Specific Plan Amendment. The General Plan Amendment proposes to revise the boundaries of the Specific Plan area and designate the area removed from the Specific Plan within the jurisdiction of the County of Riverside as Public Facility (PF). The Tentative Tract Map proposes to subdivide

161.89 gross acres located westerly of Leon Road, southerly of Borel Road, northerly of McGowans Pass, and generally easterly of existing Calistoga Road into 269 residential lots, 2 open space lots, 10 water quality lots, 8 HOA lots, and 4 park lots. (Zones A, B1, B2, C, and D of French Valley Airport Influence Area). Continued from July 10, 2014. ALUC Staff Planner: Russell Brady at (951) 955-0549, or e-mail at rbrady@rctlma.org.

Staff Recommendation: CONSISTENT

3.0 PUBLIC HEARING: NEW CASES

MARCH AIR RESERVE BASE

- 3.1 ZAP1097MA14 – Darrell Butler – City of Riverside Case Nos. P14-0600 (Rezoning) and P14-0601 (Design Review). The applicant proposes to construct a 121,390 square foot industrial warehouse building (including 7,500 square feet of office space) on 6.22 net acres (6.98 gross acres) located at the southeasterly corner of Mt. Baldy Drive and San Gorgonio Drive. The project also involves rezoning from Commercial Retail, Height of Building 2-stories, with Specific Plan (Sycamore Canyon Business Park) Overlay Zone (CR-S-2-SP) to Business and Manufacturing Park, Height of Building 2-stories, with Specific Plan (Sycamore Canyon Business Park) Overlay Zone (BMP-S-2-SP). (Area II of the March Air Reserve Base Airport Influence Area.) ALUC Staff Planner: Russell Brady at (951) 955-0549, or e-mail at rbrady@rctlma.org

Staff Recommendation: CONSISTENT

HEMET RYAN AIRPORT

- 3.2 ZAP1034HR14 – AT&T (Representative: Trillium Consulting, Tim Miller) – County Case No. CUP No. 3702 (Conditional Use Permit). Conditional Use Permit No. 3702 proposes to establish an unmanned telecommunications facility consisting of antennas on an 88-foot high monopole tower, with associated equipment shelter, on a 355 square foot lease area within a 20.0-acre parcel located southerly of Florida Avenue/SH-74, easterly of a southerly straight-line extension of Calvert Avenue, and northerly of the westerly extension of Stetson Avenue within the unincorporated community of Green Acres. (Area III of Hemet-Ryan Airport Influence Area). ALUC Staff Planner: Russell Brady at (951) 955-0549, or e-mail at rbrady@rctlma.org

Staff Recommendation: CONTINUE TO 10-9-14

BANNING AIRPORT

3.3 ZAP1017BA14 - City of Banning (Representative: Zai Abu Bakar) – City Case Nos. 14-2501 (General Plan Amendment) and 14-3501 (Zone Change). The City of Banning proposes to amend the General Plan land use designation and zoning classification on 18.62 acres. Specifically, the City proposes to change the land use designation and zoning of 1.45 acres consisting of nine existing developed lots located on the easterly side of Hargrave Avenue, southerly of Barbour Street (Assessor's Parcel Numbers 541-320-001 through -009), from Industrial to Low Density Residential (LDR), (0-5 dwelling units per acre), and to change the land use designation and zoning of an additional nine lots (17.17 acres) located along the southerly side of Barbour Street, easterly of Hargrave Avenue and westerly of the intersection of Barbour Street with Juarez Street (Assessor's Parcel Numbers 541-320-010 through -015, and -018 through -020), from Industrial to Very Low Density Residential (VLDR) (0-2 dwelling units per acre). (Zone D of the Banning Municipal Airport Influence Area.) ALUC Staff Planner: Russell Brady at (951) 955-0549, or e-mail at rbrady@rctima.org

Staff Recommendation: INCONSISTENT

3.4 ZAP1018BA14 – Museum of Pinball, Inc. (Representative: Ramon Aoanan) – City of Banning Case No. 14-8005 (Conditional Use Permit). The Conditional Use Permit would allow for the conversion of a former manufacturing facility into a pinball machine museum and arcade. Two existing buildings totaling 83,436 square feet would be converted into the museum/arcade and would include exhibit/assembly area, restaurant, bars, and seating areas, lounges, offices, and educational/vocational areas. A third existing building totaling 34,220 square feet would be maintained for warehouse/storage and office uses. The applicant also proposes to provide for RV (42 spaces) camping areas and amenities such as a jogging path, swimming pool and tennis courts. The site consists of approximately 18.17 acres net (19.76 acres gross) located easterly of Hathaway Street, northerly of Westward Avenue, and southerly of Lincoln Street, and bisected by Barbour Street, in the City of Banning. (Airport Compatibility Zones D and B2 of the Banning Municipal Airport Influence Area). ALUC Staff Planner: Russell Brady at (951) 955-0549, or e-mail at rbrady@rctima.org

Staff Recommendation: INCONSISTENT

4.0 ADMINISTRATIVE ITEMS

4.1 March EIR Status Update

4.2 Focus: Day Care Compatibility Plan Criteria

5.0 APPROVAL OF MINUTES

July 10, 2014

6.0 ORAL COMMUNICATION ON ANY MATTER NOT ON THE AGENDA

7.0 COMMISSIONER'S COMMENTS



AIRPORT LAND USE COMMISSION RIVERSIDE COUNTY AGENDA

Riverside County Administration Center
4080 Lemon St., 1st Floor Hearing Room
Riverside, California

Thursday 9:00 a.m., September 11, 2014

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Simon Housman
Rancho Mirage

VICE CHAIRMAN
Rod Ballance
Riverside

COMMISSIONERS

Arthur Butler
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Glen Holmes
Hemet

John Lyon
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Staff Recommendation: INCONSISTENT

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Staff Recommendation: INCONSISTENT

4.0 ADMINISTRATIVE ITEMS

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4.2 Focus: Day Care Compatibility Plan Criteria

5.0 APPROVAL OF MINUTES

July 10, 2014

6.0 ORAL COMMUNICATION ON ANY MATTER NOT ON THE AGENDA

7.0 COMMISSIONER'S COMMENTS

**COUNTY OF RIVERSIDE
AIRPORT LAND USE COMMISSION**

STAFF REPORT

AGENDA ITEM: 3.3
HEARING DATE: September 11, 2014
CASE NUMBER: ZAP1017BA14 – City of Banning
APPROVING JURISDICTION: City of Banning
JURISDICTION CASE NOS: General Plan Amendment 14-2501, Zone Change 14-3501

MAJOR ISSUES: The project proposes intermediate densities greater than 0.2 dwelling units per acre but below 5.0 dwelling units per acre. The project is intended primarily to reflect existing land uses and allow for existing residences to make needed improvements that are restricted under the current Industrial designation. The areas proposed as Low Density Residential along Hargrave Street and 2 of the parcels proposed as Very Low Density Residential would reflect the existing development and based on the existing lot sizes would not allow for future subdivision and would thus be considered nonconforming existing uses pursuant to Countywide Policy 3.3.2 and would be consistent. However, 7 of the 9 parcels proposed as Very Low Density Residential would allow for further subdivision based on the existing parcel sizes and the minimum lot size of ½-acre allowed by the designation and would thus not be similarly strictly considered nonconforming existing uses. Despite this, certain factors are apparent that may be considered by the Commission under Countywide Policy 3.3.6 to find the normally incompatible density compatible as presented in the following analysis. ←

RECOMMENDATION: Staff recommends a finding of INCONSISTENCY for the zone change and general plan amendment, based on the potential for future development and subdivision pursuant to the size of 7 of the existing parcels proposed for Very Low Density Residential and the allowed densities of the Very Low Density Residential designation. If the proposal is modified to exclude those seven parcels, staff would recommend a finding of CONSISTENCY.

PROJECT DESCRIPTION: General Plan Amendment 14-2501 and Zone Change 14-3501 are proposals by the City of Banning to change the existing General Plan land use designation and zoning classification of 1.45 acres from Industrial to Low Density Residential (LDR) (0-5 dwelling units per acre) and 17.17 acres from Industrial to Very Low Density Residential (VLDR) (0-2 dwelling units per acre).

PROJECT LOCATION: The site is located southerly of Barbour Street, easterly of Hargrave Street, northerly of Charles Street, and westerly of a southerly straight-line extension of Juarez

Street, in the City of Banning, approximately 1,700 feet southwesterly of the westerly terminus of Runway 8-26 at Banning Municipal Airport.

LAND USE PLAN: 2004 Banning Municipal Airport Land Use Compatibility Plan

- a. Airport Influence Area: Banning Municipal Airport
- b. Land Use Policy: Zone D
- c. Noise Levels: Below 55 CNEL

BACKGROUND:

Residential Density: The site is located in Zone D of the Banning Municipal Airport Influence Area. Zone D requires a minimum residential density of 5.0 dwelling units per acre or otherwise limits density to no more than 0.2 dwelling units per acre. The proposed General Plan Amendment and Zone Change would specifically allow for densities between 0.2 and 5.0 dwelling units per acre, which would not comply with the Zone D residential criteria.

However, the General Plan Amendment and Zone Change are proposed to primarily reflect existing residential development on these properties. Of the 18 properties included, 15 are already developed with single family residential land uses, and the remaining 3 are vacant. 11 of the properties already developed would not be eligible for further subdivision, based on their current lot sizes and the allowable densities of the proposed classifications. Each of the LDR proposed parcels along Hargrave Street and two of the VLDR parcels are in this category. Based on historical aerial images, all of these 11 properties were developed at the time of adoption of the current Banning Municipal Airport Land Use Compatibility Plan in 2004. The development on these 11 properties would be considered nonconforming existing uses pursuant to Countywide Policy 3.3.2. The proposed General Plan Amendment and Zone Change for these properties simply reflect the existing uses. As stated on Page 6-13 of the California Airport Land Use Planning Handbook, "...a local plan cannot be found inconsistent with the ALUCP because of land use designations that reflect existing land uses, even if those designations conflict with the ALUC's compatibility criteria." ←

This leaves the 3 vacant properties (APNs 541-320-010, 541-320-011, 541-320-012) and 4 of the developed properties (APNs 541-320-013, 541-320-014, 541-320-015, 541-320-018) proposed as VLDR that could be further subdivided at a density that would not comply with the Zone D residential criteria. If each lot were subdivided further individually, the total number of lots could be 27 lots compared to the 7 current lots. While the 4 developed properties could currently be considered nonconforming existing uses pursuant to policy 3.3.2, subdivision resulting in additional residential development at densities less than 5 dwelling units per acre and more than one unit per 5 acres would not comply with the Zone D residential criteria. Therefore, the proposed General Plan Amendment and Zone Change are inconsistent with the Zone D residential criteria.

Prohibited and Discouraged Uses: The applicant does not propose any uses prohibited or discouraged in Zone D (highly noise-sensitive outdoor nonresidential uses and hazards to flight) within the project, nor would the proposed General Plan Amendment or Change of Zone likely allow for any prohibited or discouraged uses. However, as noted previously the allowable densities pursuant to the proposed designations and classifications would not comply with the Zone D residential density criteria.

Noise: The properties lie just outside the area that would be subject to average exterior noise levels of 55 CNEL or greater under ultimate airport development conditions. Therefore, no special mitigation of noise from aircraft is required.

Part 77: The elevation of Runway 8-26 at its westerly terminus is approximately 2,219 feet above mean sea level (2219 feet AMSL). At a distance of approximately 1,700 feet to the nearest parcel included within the proposed General Plan Amendment and Zone Change, Federal Aviation Administration (FAA) review would be required for any structures with top of roof exceeding 2236 feet AMSL. The maximum height allowed in the Low Density Residential and Very Low Density Residential zones is 35 feet. Existing elevations on the site range between 2208 and 2248 feet AMSL, with the northeast portion of the site closest to the airport at approximately 2224 feet AMSL. Therefore, new structures at this location could potentially require FAA review, depending on height. Since no specific subdivision or buildings are currently proposed, FAA obstruction evaluation is not required at this time.

Open Area: Compatibility Zone D requires 10% of area within major projects (10 acres or larger) to be set aside as open land that could potentially serve as emergency landing areas. Although the total project area for the current General Plan Amendment and Zone Change exceeds 10 acres, this area consists of multiple parcels with multiple owners and as previously noted, 15 of the 18 parcels are already developed. The total area of vacant properties is 7.55 acres. Considering only those parcels not already developed to potentially require open area, the requirement would not be applicable since the area does not exceed 10 acres.

Countywide Policy 3.3.6: While the VLDR portion of the proposed General Plan Amendment and Zone Change, in particular the 7 properties noted could be subdivided further, would not strictly comply with Zone D density criteria, the Commission may choose to consider whether to find the normally incompatible density compatible pursuant to Countywide Policy 3.3.6 if the combination of the following facts are determined to represent "other extraordinary factors or circumstances" as noted below:

- The proposed General Plan Amendment and Zone Change is primarily intended to reflect the existing land uses present on most of the properties and to allow these properties to make needed improvements to their residences that are currently prohibited due to the Industrial zoning currently applied to these properties.
- Any potential future subdivision on these properties would be subject to the City of Banning transmitting the project to ALUC for comment and ALUC requesting review.

Staff Report
Page 4 of 4

- The project site is in an area below 55 CNEL, thus limiting noise impacts and potential nuisance complaints from such potential density.
- The project site is not located beneath or near the extended centerline of the runway.
- The project site is not located beneath or near the General Traffic Pattern Envelope

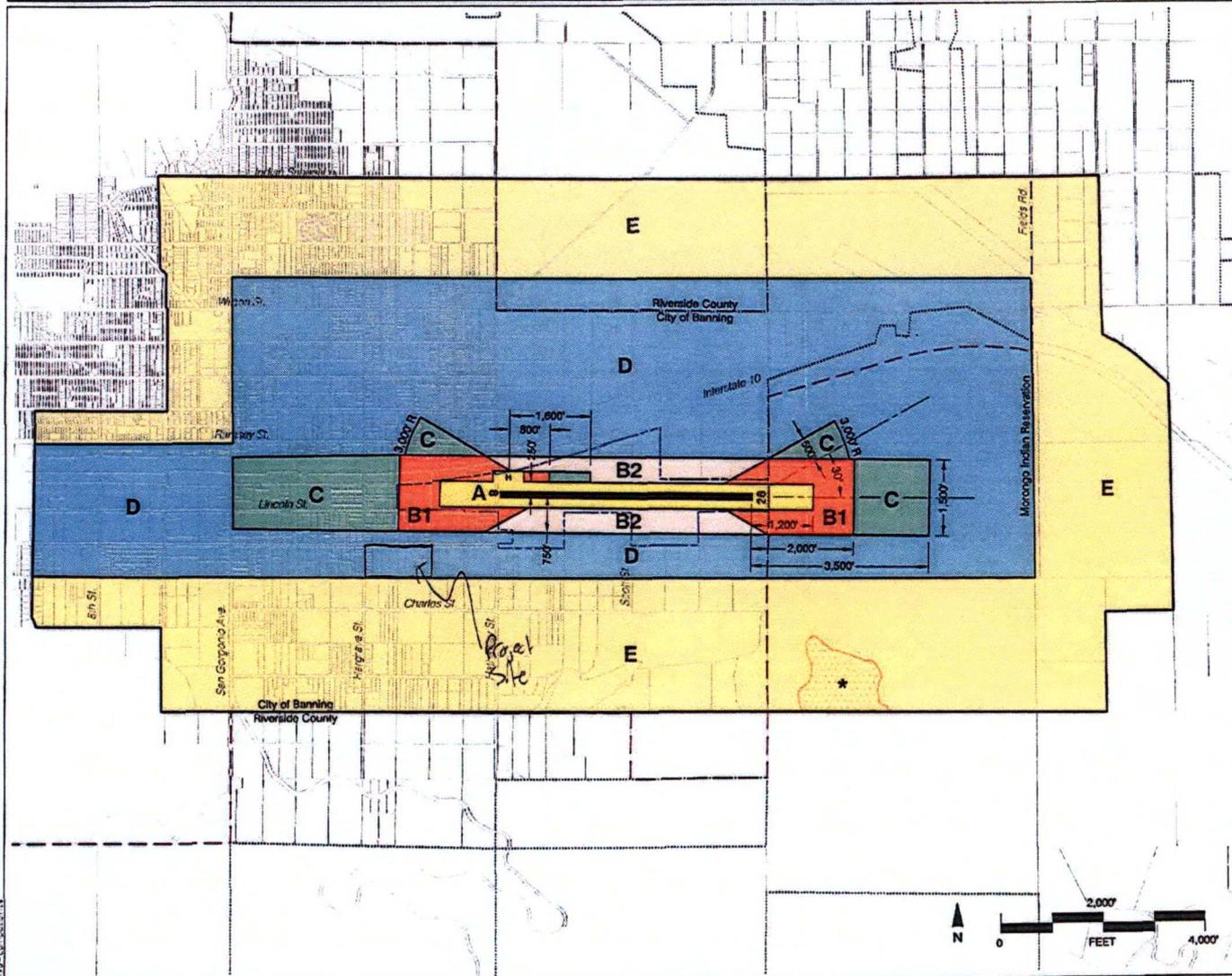
Attachment: State law requires notification in the course of real estate transactions if the property is located in an Airport Influence Area.

No conditions are proposed or required, as general plan amendments and changes of zone are not subject to conditions.

Y:\AIRPORT CASE FILES\Banning\ZAP1017BA14\ZAP1017BA14sr.doc

NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you. Business & Professions Code Section 11010 (b) (13)(A)



Legend

- Compatibility Zones**
- Airport Influence Area Boundary
 - Zone A
 - Zone B1
 - Zone B2
 - Zone C
 - Zone D
 - Zone E
 - Height Review Overlay Zone

Boundary Lines

- Airport Property Line
- City Limits
- Morongo Indian Reservation

Note

Dimensions measured from runway ends and centerlines.

See Chapter 2, Table 2A for compatibility criteria associated with this map.

Riverside County
 Airport Land Use Commission
 Riverside County
 Airport Land Use Compatibility Plan
 Policy Document
 (Adopted October 2004)

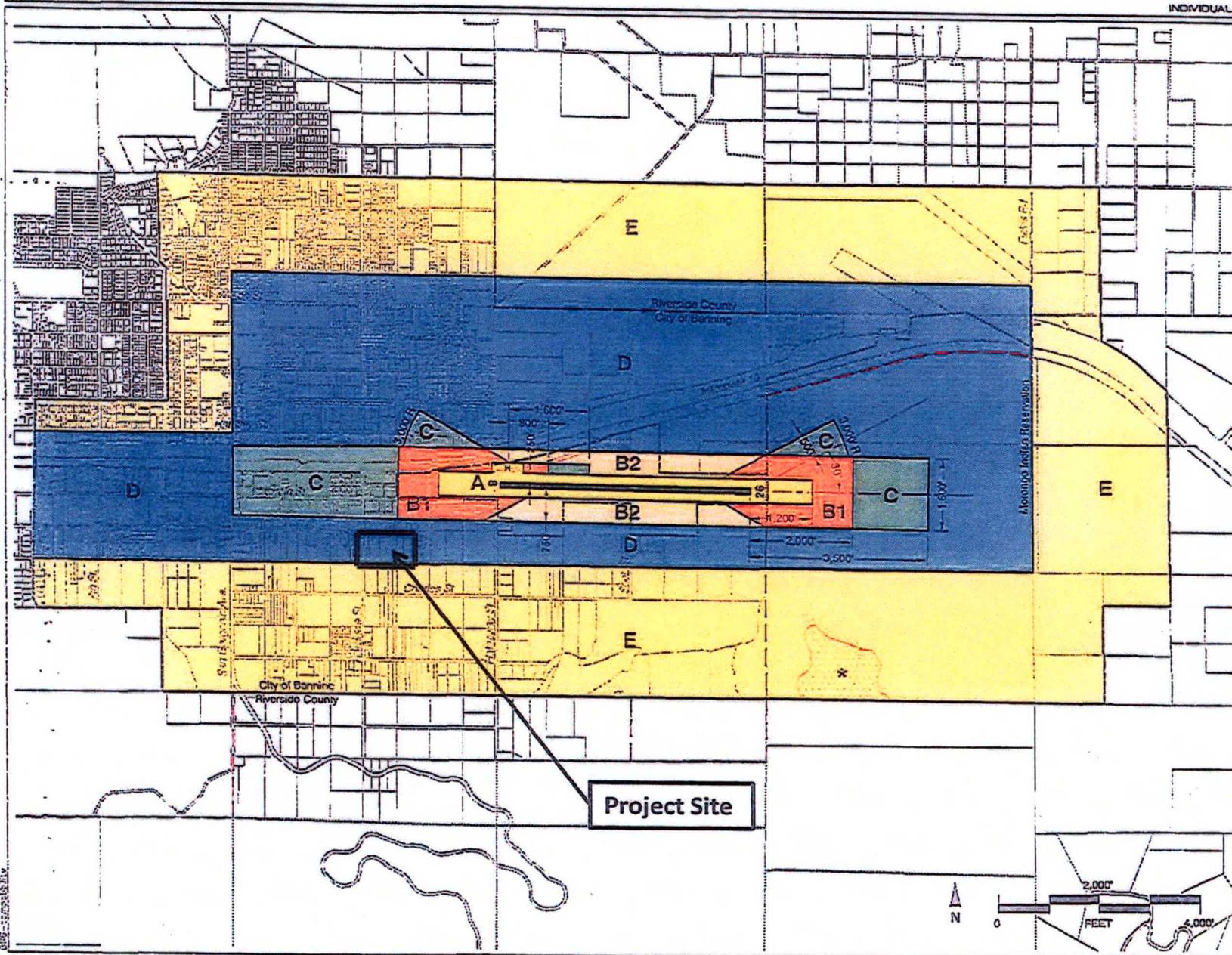
Map BN-1



Compatibility Map
 Banning Municipal Airport

629

812-compatibility



Legend

- Compatibility**
- Airpo
 - Zone
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 - Heigh

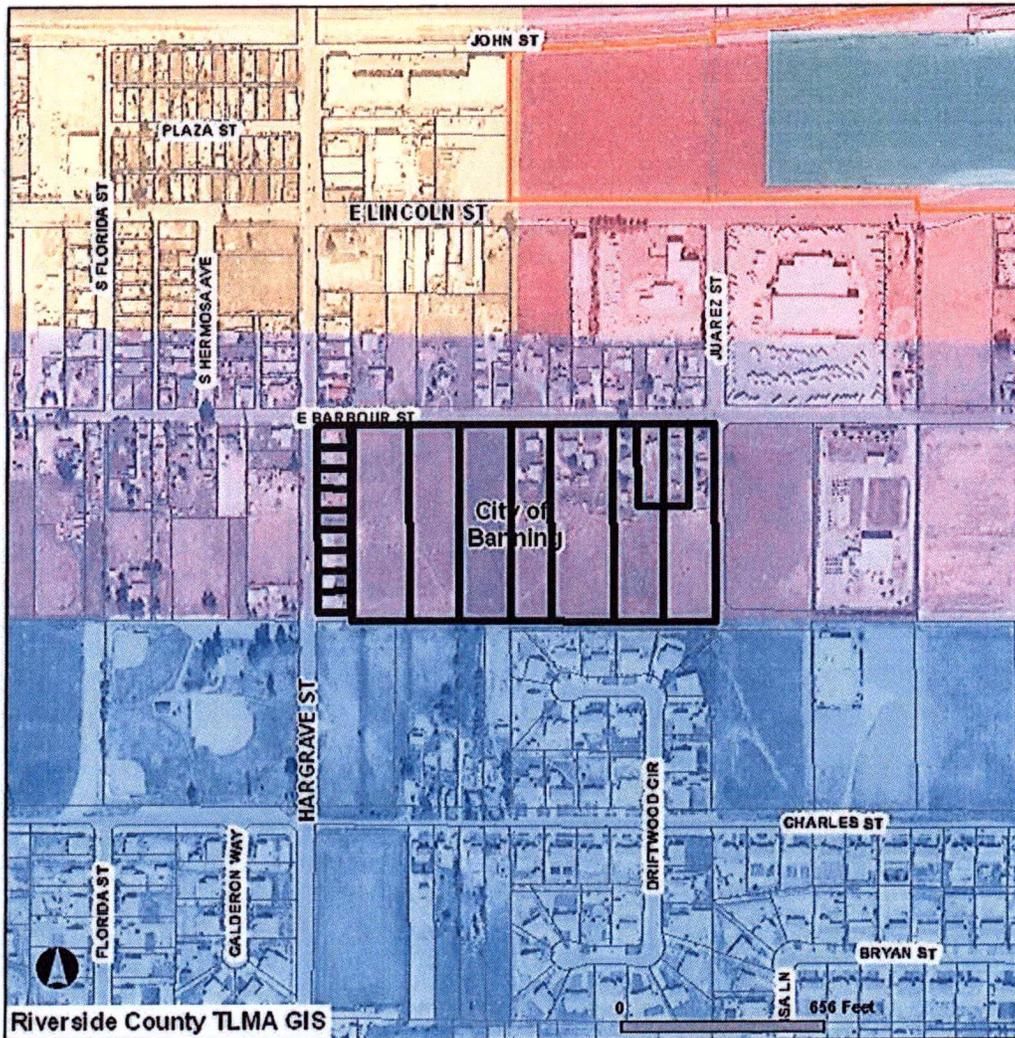
- Boundary Lin**
- -
 -

Note
 Dimensions in
 centerline.
 See Chapter 2,
 associated with

Ri
 Airport I
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 Airport Lana
 Po
 (Add

280

RIVERSIDE COUNTY GIS



Selected parcel(s):

541-320-001 541-320-002 541-320-003 541-320-004 541-320-005 541-320-006 541-320-007
 541-320-008 541-320-009 541-320-010 541-320-011 541-320-012 541-320-013 541-320-014
 541-320-015 541-320-018 541-320-019 541-320-020

AIRPORTS

- | | | | |
|-----------------------|-------------------------|----------------------|----------------------|
| SELECTED PARCEL | INTERSTATES | HIGHWAYS | PARCELS |
| AIRPORT RUNWAYS | AIRPORT INFLUENCE AREAS | AIRPORT BOUNDARIES | COMPATIBILITY ZONE A |
| COMPATIBILITY ZONE B1 | COMPATIBILITY ZONE C | COMPATIBILITY ZONE D | COMPATIBILITY ZONE E |

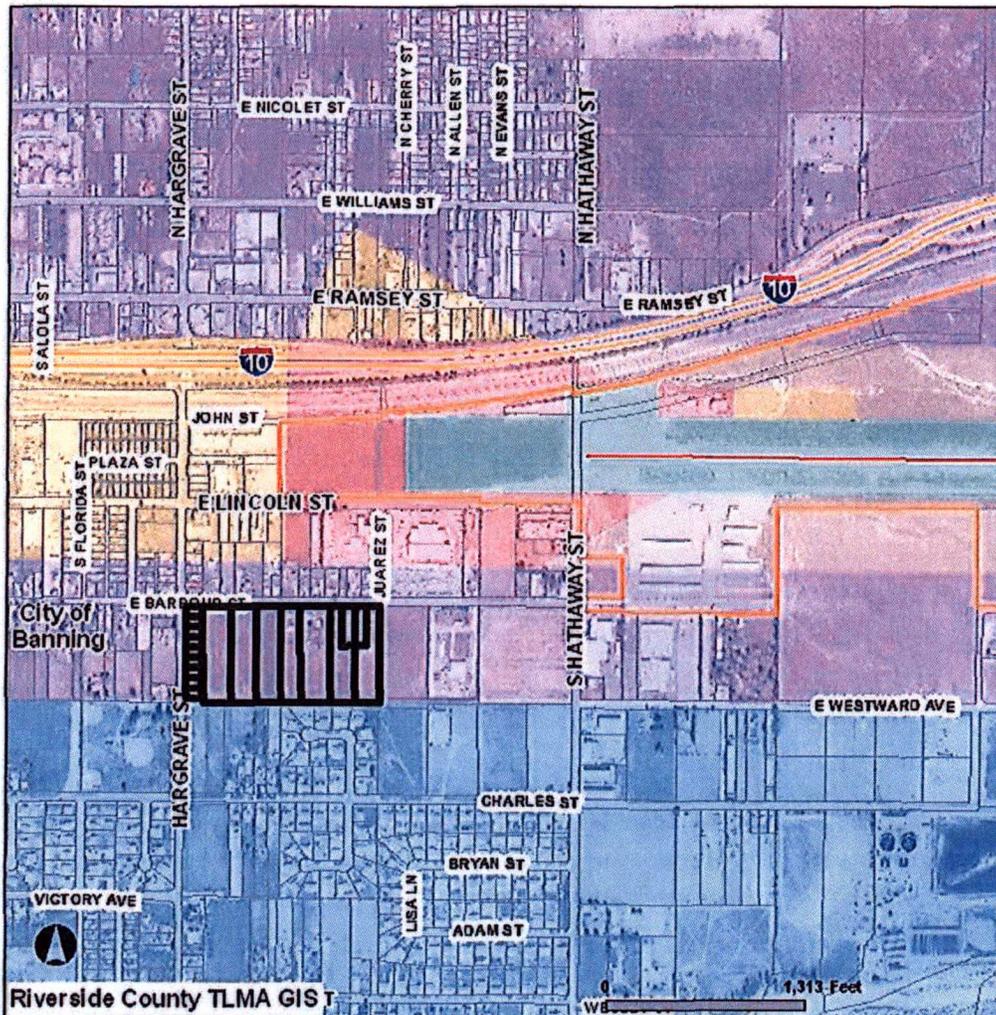
IMPORTANT

Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. The County of Riverside makes no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.

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RIVERSIDE COUNTY GIS



Selected parcel(s):

541-320-001 541-320-002 541-320-003 541-320-004 541-320-005 541-320-006 541-320-007
 541-320-008 541-320-009 541-320-010 541-320-011 541-320-012 541-320-013 541-320-014
 541-320-015 541-320-018 541-320-019 541-320-020

AIRPORTS

- SELECTED PARCEL
- AIRPORT RUNWAYS
- COMPATIBILITY ZONE B1
- COMPATIBILITY ZONE E
- INTERSTATES
- AIRPORT INFLUENCE AREAS
- COMPATIBILITY ZONE B2
- AIRPORT BOUNDARIES
- COMPATIBILITY ZONE C
- HIGHWAYS
- PARCELS
- COMPATIBILITY ZONE A
- COMPATIBILITY ZONE D

IMPORTANT

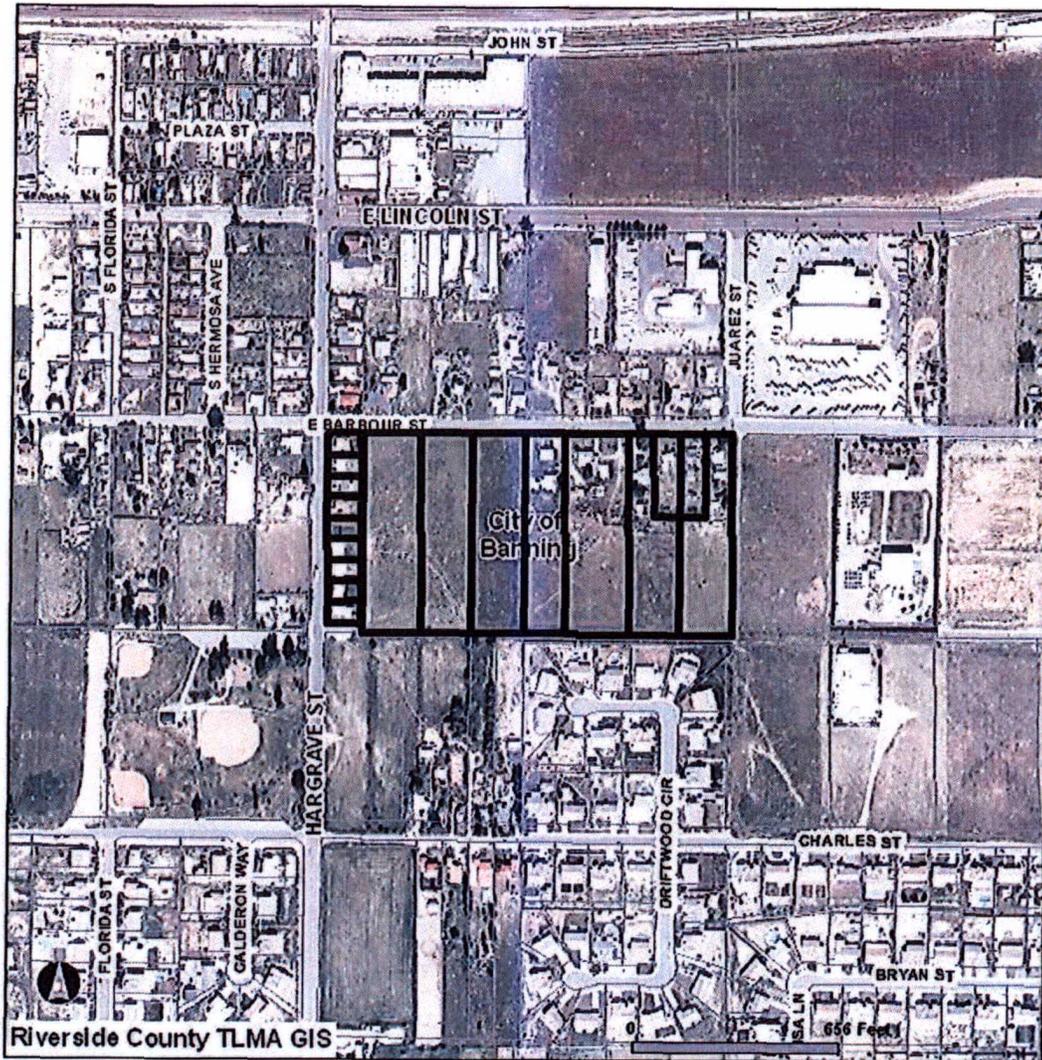
Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. The County of Riverside makes no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.

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282

RIVERSIDE COUNTY GIS



Selected parcel(s):

541-320-001 541-320-002 541-320-003 541-320-004 541-320-005 541-320-006 541-320-007
 541-320-008 541-320-009 541-320-010 541-320-011 541-320-012 541-320-013 541-320-014
 541-320-015 541-320-018 541-320-019 541-320-020

LEGEND

- SELECTED PARCEL
- INTERSTATES
- HIGHWAYS
- PARCELS
- CITY

IMPORTANT

Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. The County of Riverside makes no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.

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283

Neighborhood bounded by
Hargrave, Barbour, Juarez, & Westward
18 parcels (18.62 acres)

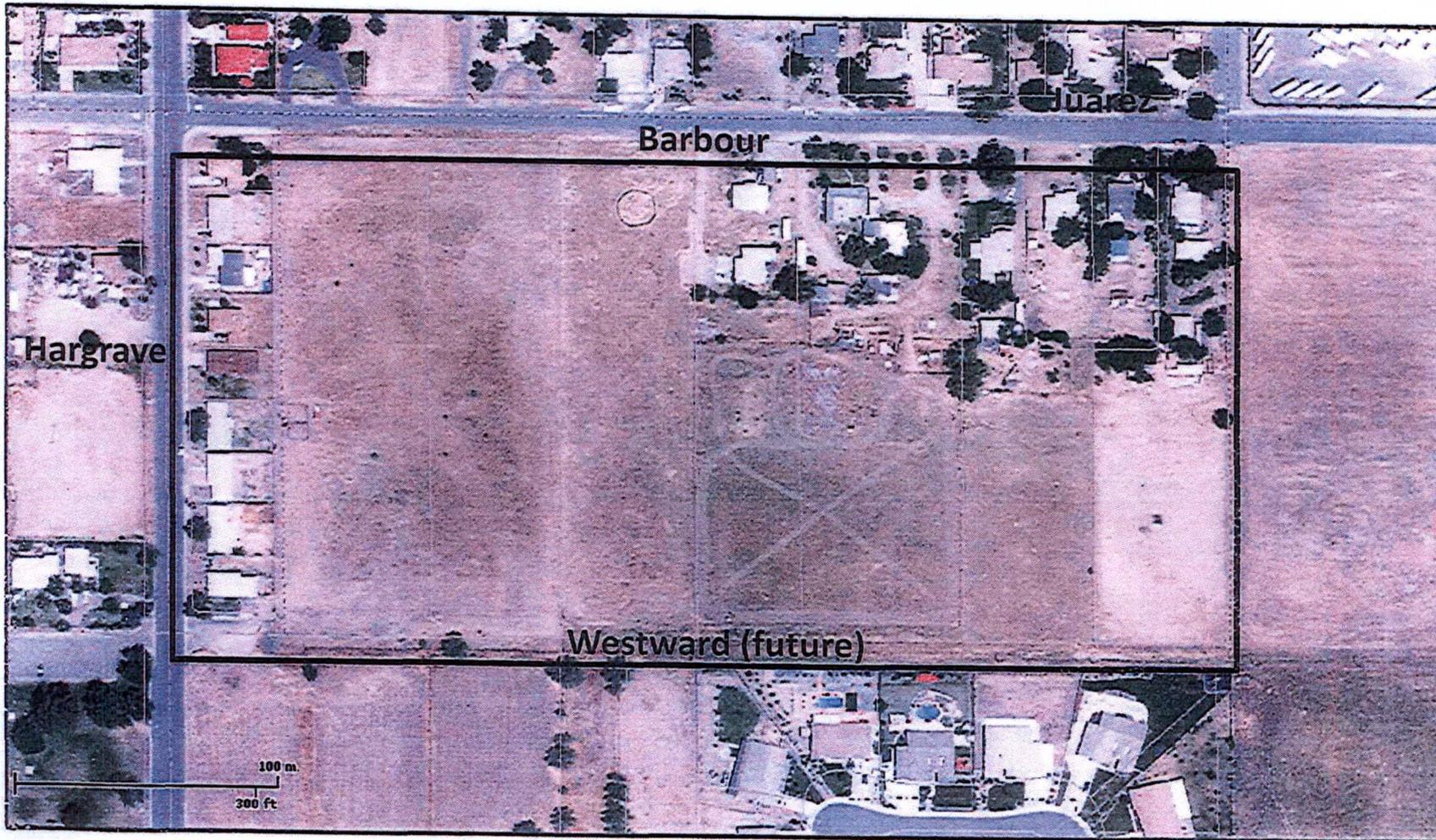


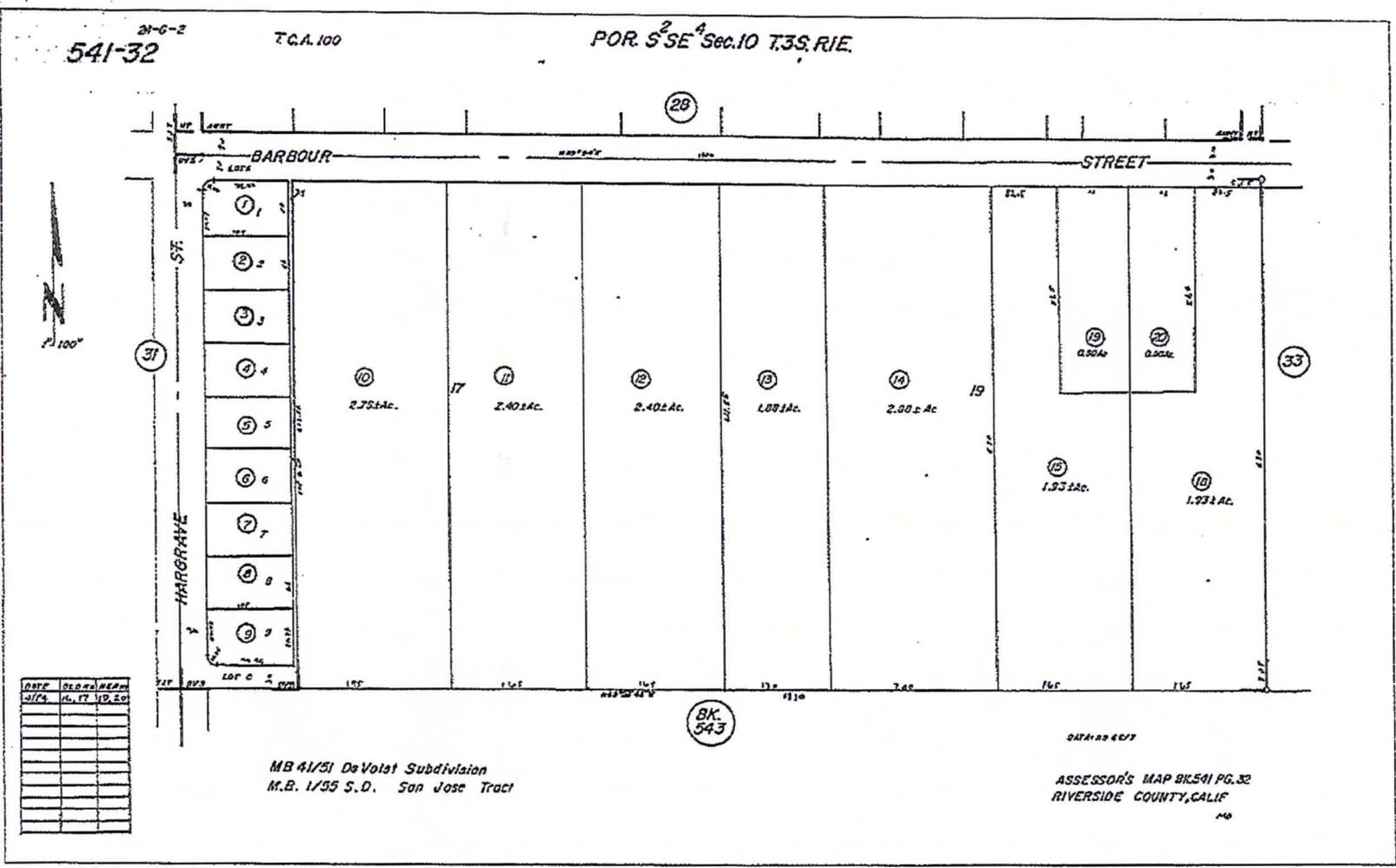
Exhibit 1

541-32

21-G-2

T.C.A. 100

POR. S² SE⁴ Sec. 10 T. 3S. R. 1E.



MB 41/51 DeVolat Subdivision
M.B. 1/55 S.D. San Jose Tract

ASSESSOR'S MAP BK 541 PG. 32
RIVERSIDE COUNTY, CALIF

Information compiled from various sources. CoreLogic makes no representations or warranties as to the accuracy or completeness of information contained in this report.

Exhibit 2

288

Existing General Plan and Zoning - Industrial

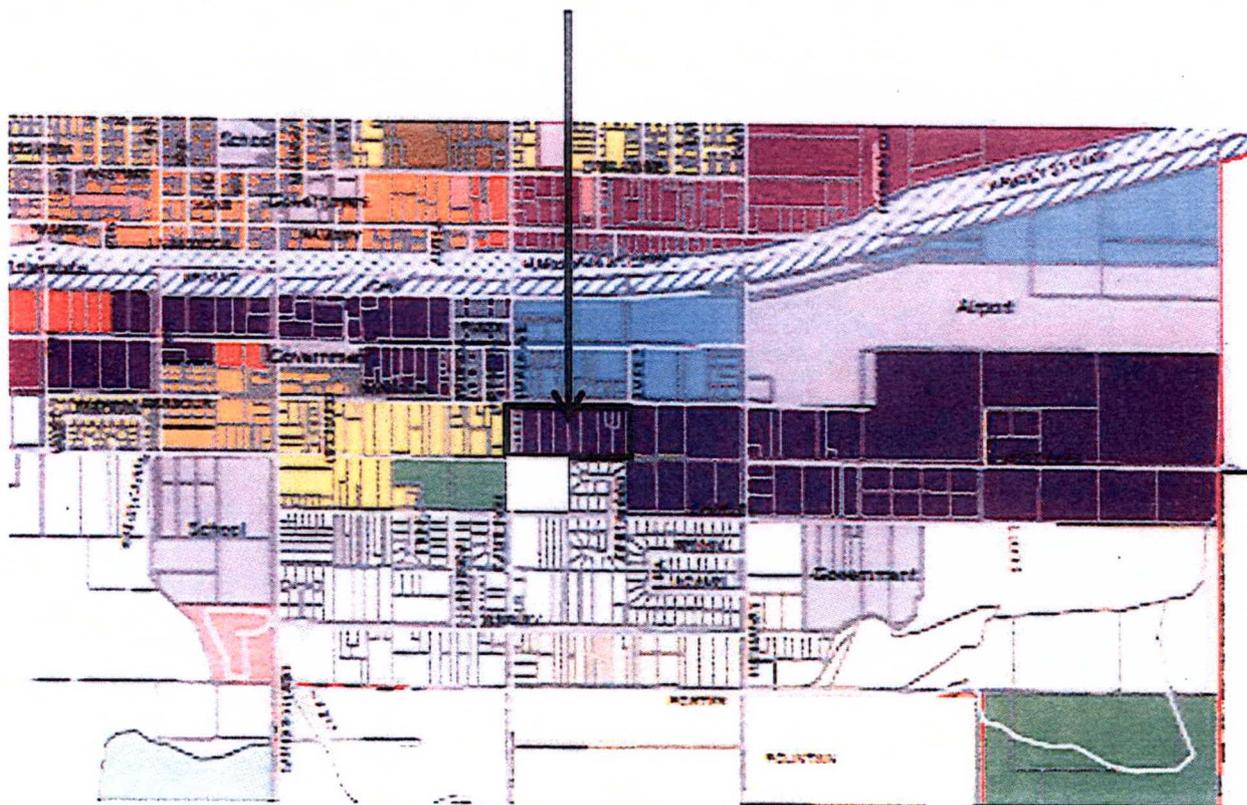


Exhibit 3

LDR Proposed Parcels

541320001, 541320002, 541320003, 541320004, 541320005, 541320006, 541320007, 541320008, 541320009

LOT SIZE:

**541-320-001
RECORDED LOT SIZE IS 0.16 ACRES
DEVELOPED
NOT DIVISIBLE FURTHER**

**541-320-002
RECORDED LOT SIZE IS 0.16 ACRES
DEVELOPED
NOT DIVISIBLE FURTHER**

**541-320-003
RECORDED LOT SIZE IS 0.16 ACRES
DEVELOPED
NOT DIVISIBLE FURTHER**

**541-320-004
RECORDED LOT SIZE IS 0.16 ACRES
DEVELOPED
NOT DIVISIBLE FURTHER**

**541-320-005
RECORDED LOT SIZE IS 0.16 ACRES
DEVELOPED
NOT DIVISIBLE FURTHER**

**541-320-006
RECORDED LOT SIZE IS 0.16 ACRES
DEVELOPED
NOT DIVISIBLE FURTHER**

**541-320-007
RECORDED LOT SIZE IS 0.16 ACRES
DEVELOPED
NOT DIVISIBLE FURTHER**

**541-320-008
RECORDED LOT SIZE IS 0.16 ACRES
DEVELOPED
NOT DIVISIBLE FURTHER**

**541-320-009
RECORDED LOT SIZE IS 0.17 ACRES
DEVELOPED
NOT DIVISIBLE FURTHER**

VLDR Proposed Parcels

541320010, 541320011, 541320012, 541320013, 541320014, 541320015, 541320018, 541320019, 541320020

LOT SIZE:

**541-320-010
RECORDED LOT SIZE IS 2.75 ACRES
VACANT
FURTHER SUBDIVISION POTENTIAL OF 6 LOTS**

**541-320-011
RECORDED LOT SIZE IS 2.4 ACRES
VACANT
FURTHER SUBDIVISION POTENTIAL OF 4 LOTS**

541-320-012
RECORDED LOT SIZE IS 2.4 ACRES
VACANT
FURTHER SUBDIVISION POTENTIAL OF 4 LOTS

541-320-013
RECORDED LOT SIZE IS 1.88 ACRES
DEVELOPED
FURTHER SUBDIVISION POTENTIAL OF 3 LOTS

541-320-014
RECORDED LOT SIZE IS 2.88 ACRES
DEVELOPED
FURTHER SUBDIVISION POTENTIAL OF 5 LOTS

541-320-015
RECORDED LOT SIZE IS 1.93 ACRES
DEVELOPED
FURTHER SUBDIVISION POTENTIAL OF 3 LOTS

541-320-018
RECORDED LOT SIZE IS 1.93 ACRES
DEVELOPED
FURTHER SUBDIVISION POTENTIAL OF 3 LOTS

541-320-019
RECORDED LOT SIZE IS 0.5 ACRES
DEVELOPED
NOT DIVISIBLE FURTHER

541-320-020
RECORDED LOT SIZE IS 0.5 ACRES
DEVELOPED
NOT DIVISIBLE FURTHER

CHAPTER II - LAND USE DISTRICTS

**SECTION 9102.00
RESIDENTIAL DISTRICTS**

9102.01 PURPOSE

1. This Section is intended to achieve and improve the liveability of Banning's residential neighborhoods, and to protect the property values of Banning homeowners, by:
 - Prohibiting uses which are incompatible with quiet residential living.
 - Creating zones and neighborhoods which differ from one another in intensity of use and density of dwellings.
 - Welcoming a broad diversity of housing types (and people) from farm-based, to rural, to mobile homes, to multifamily dwellings and apartment buildings, to suburban style housing, and to low density, estate style residential development.
 - Providing sufficient safeguards for the City's inhabitants through ensuring sufficient light, clean air, privacy and green space for each dwelling.
 - Minimizing the negative impacts of traffic intensity (such as noise, polluted air, gridlock, and danger to pedestrians), in residential neighborhoods.
 - Protecting residential neighborhoods from illumination spillage, foul or hazardous odors, smoke, and other negative by-products from non-residential segments of the city.
 - Planning for the provision of public improvements and infrastructure to serve Banning's growing residential neighborhoods.
 - Locating new development to retain the scale and character of existing residential neighborhoods
 - Improving declining and mixed use residential neighborhoods.
 - Improving the pedestrian or equestrian connections between neighborhoods, and pedestrian access from neighborhoods to commercial areas.
 - And by allowing the growth of the City to occur on vacant and underutilized properties in the City.
2. There is a different purpose for each zoning district. An explanation of each of the City's residential zoning districts follows:

A. RANCH/ AGRICULTURE (R/A) DISTRICT (1 du/10 acres)

This district allows detached single family homes on lots of at least ten acres. Also permitted are agricultural and ranching activities, animal keeping (both personal and commercial use), and animal-keeping or agricultural related commercial enterprises, such as feed stores, commercial stables and similar uses. Bed & breakfast lodging and similar uses may be appropriate in this district, with the approval of a conditional use permit. If density transfers from the Ranch/Agriculture Residential – Hillside district are applied to a Ranch/Agriculture Residential parcel, the maximum density shall be one dwelling unit per 5 acres.

B. RANCH/ AGRICULTURE RESIDENTIAL -- HILLSIDE (RAR-H) (1 du/10 acres)

This zoning district is assigned to lands in the foothills. Portions of the site exceeding 25% slope as well as the ridgelines are to be preserved as open space, but density may be transferred to developable areas. If a density transfer is applied, the maximum density for the developable lands shall be one dwelling unit per 5 acres.

C. RURAL RESIDENTIAL (RR) (0-1 du/acre)

This zoning district allows detached single family homes on lots of at least one gross acre. Uses also permitted include agricultural and ranching activities, animal keeping (both personal use and commercial). Bed & breakfast lodging and similar uses may be appropriate with the approval of a conditional use permit. Animal-keeping or agricultural related commercial enterprises, such as feed stores, commercial stables and similar uses may be appropriate with approval of a conditional use permit.

D. RURAL RESIDENTIAL – HILLSIDE (RR-H) (0-1 du/acre)

This zoning district is assigned to lands in the foothills. Portions of the site exceeding 25% slope as well as the ridgelines are to be preserved as open space, but density may be transferred to developable areas. All other RR development standards apply. If a density transfer is applied, the maximum density allowable is 2 units to the acre, and the standards of the Very Low Density Residential district will be applied.

E. VERY LOW DENSITY RESIDENTIAL (VLDR) (0-2 du/acre)

This zoning district allows detached single-family homes at a density of up to 2 units per acre. May be appropriate for bed & breakfast and similar uses. Animal keeping is permitted according to Zoning restrictions.

F. LOW DENSITY RESIDENTIAL (LDR) (0-5 du/acre)

This zoning district allows the development of attached and detached single family homes, in traditional subdivisions and planned communities. The clustering of condominiums and townhomes may be appropriate with the provision of common area amenities and open space, when a Specific Plan or Planned Unit Development is prepared. Bed & breakfasts and similar uses may be appropriate with the approval of a conditional use permit. Home Occupations are permitted with approval of a Home Occupation permit.

G. MEDIUM DENSITY RESIDENTIAL (MDR) (0-10 du/acre)

This zoning district allows the development of attached and detached single family homes, in traditional subdivisions and planned communities. Also allows condominiums and townhomes, garden apartments and duplexes, with the provision of common area amenities and open space. The clustering of condominiums and townhomes may be appropriate with the provision of common area amenities and open space. Bed & breakfasts and similar uses may be appropriate with the approval of a conditional use permit. Home Occupations are permitted with approval of a Home Occupation permit. May also be appropriate for convenience retail commercial ("corner store" type development such as convenience stores, grocery or green grocer, video rental, drug stores, sit down restaurants, coffee shops or coffee bars or similar uses), less than 5,000 square feet in total square footage, with approval of a conditional use permit. Mixed use projects, which combine residential and commercial uses, are appropriate with approval of a Planned Unit Development.

H. HIGH DENSITY RESIDENTIAL (HDR) (11-18 du/acre)

Allows condominiums and townhomes, as well as apartments with the provision of common area amenities and open space. The clustering of condominiums and townhomes is appropriate with the provision of common area amenities and open space. Mobile home parks and subdivisions with the provision of common area amenities and open space may also be appropriate, with the approval of a conditional use permit. Home Occupations may be appropriate with approval of a Home Occupation permit.

I. MOBILE HOME PARK (MHP)

The district applies to existing mobile home parks or subdivisions within the City. Only mobile parks and subdivisions are permitted. Home occupations may be appropriate with the approval of a conditional use permit.

9102.02 PERMITTED, CONDITIONAL AND PROHIBITED USES

The following list represents those uses in the residential districts which are Permitted (P), subject to a Conditional Use Permit (C) or Prohibited (X):

- (1) The average density represented by all existing lots that lie fully or partially within a distance of 300 feet from the boundary of the parcel to be divided; or
 - (2) Double the density permitted in accordance with the criteria for that location as indicated in the Compatibility Criteria matrix, Table 2A.
- (c) For nonresidential development, the average usage intensity (the number of people per gross acre) of the site's proposed use shall not exceed the lesser of:
- (1) The average intensity of all existing uses that lie fully or partially within a distance of 300 feet from the boundary of the proposed development; or
 - (2) Double the intensity permitted in accordance with the criteria for that location as indicated in the Compatibility Criteria matrix, Table 2A.
- (d) The single-acre and risk-reduction design density and intensity multipliers described in Policies 4.2.5 and 4.2.6 and listed in Table 2A are applicable to infill development.
- (e) Infill development on some parcels should not enable additional parcels to then meet the qualifications for infill. The ALUC's intent is that parcels eligible for infill be determined just once. Thus, in order for the ALUC to consider proposed development under these infill criteria, the entity having land use authority (Riverside County or affected cities) must first identify the qualifying locations in its general plan or other adopted planning document approved by the ALUC. This action may take place in conjunction with the process of amending a general plan for consistency with the ALUC plan or may be submitted by the local agency for consideration by the ALUC at the time of initial adoption of this *Compatibility Plan*. In either case, the burden for demonstrating that a proposed development qualifies as infill rests with the affected land use jurisdiction and/or project proponent.
- 3.3.2. *Nonconforming Uses:* Existing uses (including a parcel or building) not in conformance with this *Compatibility Plan* may only be expanded as follows:
- (a) Nonconforming residential uses may be expanded in building size provided that the expansion does not result in more dwelling units than currently exist on the parcel (a bedroom could be added, for example, but a separate dwelling unit could not be built). No ALUC review of such improvements is required.
 - (b) A nonconforming nonresidential development may be continued, leased, or sold and the facilities may be maintained or altered (including potentially enlarged), provided that the portion of the site devoted to the nonconforming use is not expanded and the usage intensity (the number of people per acre) is not increased above the levels existing at the time of adoption of this *Compatibility Plan*. No ALUC review of such changes is required.
 - (c) ALUC review is required for any proposed expansion of a nonconforming use (in terms of the site size or the number of dwelling units or people on the site). Factors to be considered in such reviews include whether the development qualifies as infill (Policy 3.3.1) or warrants approval because of other special conditions (Policy 3.3.6).

- 3.3.3. *Reconstruction:* An existing nonconforming development that has been fully or partially destroyed as the result of a calamity may be rebuilt only under the following conditions:
- (a) Nonconforming residential uses may be rebuilt provided that the expansion does not result in more dwelling units than existed on the parcel at the time of the damage.
 - (b) A nonconforming nonresidential development may be rebuilt provided that it has been only partially destroyed and that the reconstruction does not increase the floor area of the previous structure or result in an increased intensity of use (i.e., more people per acre). Partial destruction shall be considered to mean damage that can be repaired at a cost of no more than 75% of the assessor's full cash value of the structure at the time of the damage.
 - (c) Any nonresidential use that has been more than 75% destroyed must comply with all applicable standards herein when reconstructed.
 - (d) Reconstruction under Paragraphs (1) or (2) above must begin within 24 months of the date the damage occurred.
 - (e) The above exceptions do not apply within *Zone A* or where such reconstruction would be in conflict with a county or city general plan or zoning ordinance.
 - (f) Nothing in the above policies is intended to preclude work required for normal maintenance and repair.
- 3.3.4. *Development by Right:* Nothing in these policies prohibits:
- (a) Construction of a single-family home, including a second unit as defined by state law, on a legal lot of record if such use is permitted by local land use regulations.
 - (b) Construction of other types of uses if local government approvals qualify the development as effectively existing (see Policy 1.2.10 for definition).
 - (c) Lot line adjustments provided that new developable parcels would not be created and the resulting gross density or intensity of the affected property would not exceed the applicable criteria indicated in the Compatibility Criteria matrix, Table 2A.
- 3.3.5. *Parcels Lying within Two or More Compatibility Zones:* For the purposes of evaluating consistency with the compatibility criteria set forth herein, any parcel that is split by compatibility zone boundaries shall be considered as if it were multiple parcels divided at the compatibility zone boundary line. However, the density or intensity of development allowed within the more restricted portion of the parcel can (and is encouraged to) be transferred to the less restricted portion. This transfer of development is permitted even if the resulting density or intensity in the less restricted area would then exceed the limits which would otherwise apply within that compatibility zone.
- 3.3.6. *Other Special Conditions:* The compatibility criteria set forth in this *Plan* are intended to be applicable to all locations within each airport's influence area. However, it is recognized that there may be specific situations where a normally incompatible use can be considered compatible because of terrain, specific location, or other extraordinary factors or circumstances related to the site.

- (a) After due consideration of all the factors involved in such situations, the Commission may find a normally incompatible use to be acceptable.
- (b) In reaching such a decision, the Commission shall make specific findings as to why the exception is being made and that the land use will not create a safety hazard to people on the ground or aircraft in flight nor result in excessive noise exposure for the proposed use. Findings also shall be made as to the nature of the extraordinary circumstances that warrant the policy exception.
- (c) The burden for demonstrating that special conditions apply to a particular development proposal rests with the project proponent and/or the referring agency, not with the ALUC.
- (d) The granting of a special conditions exception shall be considered site specific and shall not be generalized to include other sites.
- (e) Special conditions that warrant general application in all or part of the influence area of one airport, but not at other airports, are set forth in Chapter 3 of this *Compatibility Plan*.

4. SUPPORTING COMPATIBILITY CRITERIA

4.1. Noise

- 4.1.1. *Policy Objective:* The purpose of noise compatibility policies is to avoid establishment of noise-sensitive land uses in the portions of airport environs that are exposed to significant levels of aircraft noise.
- 4.1.2. *Noise Contours:* The evaluation of airport/land use noise compatibility shall consider both the current and future Community Noise Equivalent Level (CNEL) contours of each airport as depicted in Chapter 3 of this *Plan*.
 - (a) At most airports in the county, anticipated growth in aircraft operations results in projected future noise contours being larger than current ones. However, in some instances, factors such as introduction of a quieter aircraft fleet mix, planned changes to the configuration of airport runways, or expected modifications to flight procedures can result in current contours being larger than the future contours in some or all of the airport environs. In these cases, a composite of the contours for the two time frames shall be considered in compatibility analyses.
 - (b) For airport at which aircraft activity has substantial seasonal or weekly characteristics, noise contours associated with the peak operating season or days of the week shall be taken into account in assessing land use compatibility.
 - (c) Projected noise contours included in Chapter 3 are calculated based upon forecasted aircraft activity as indicated in an airport master plan or that is considered by the Riverside County Airport Land Use Commission to be plausible (refer to activity data in the Background Data volumes). The Airport Land Use Commission or the entities that operate airports in Riverside County should periodically review these projected noise level contours and update them if appropriate.

Handbook to attempt to establish a legal definition for the term. Rather the intent here is to describe what *consistency* generally means with respect to airport land use compatibility planning.

Most importantly, a local plan does not have to be *identical* to an ALUCP in order to be *consistent* with it. The fundamental objective is that these local plans, together with any implementing policies contained in ordinances or regulations, be capable of ensuring that future land use development will not conflict with ALUCP criteria. The two specific tests that need to be considered by ALUCs when assessing whether local planning policies are *fully* consistent with the ALUCP are:

- ◆ Whether any direct conflicts between the two plans have been eliminated; and
- ◆ Whether the local plan delineates a mechanism or process for ensuring that individual land use development proposals comply with the ALUC's adopted compatibility criteria.

Elimination of Direct Conflicts

Direct conflicts primarily involve local plan land use designations that do not meet the density (for residential uses) or intensity (for nonresidential uses) criteria specified in the ALUCP, although conflicts with regard to other policies (e.g., noise; airspace protection; overflight) also may exist. The elimination of direct conflicts may not be entirely straightforward where the ALUCP classifies *particular* land uses as compatible, conditionally compatible or incompatible because ALUCs and local jurisdictions do not always work from the same set of land use designations. Therefore, it is important for ALUC and local jurisdiction staff to discuss and reconcile potential definitional ambiguities when evaluating planning document consistency.

Note, however, that a local plan cannot be found inconsistent with the ALUCP because of land use designations that reflect existing land uses, even if those designations conflict with the ALUC's compatibility criteria. Because ALUCs have no authority over existing land uses, land use designations that merely reflect the existing uses for such parcels are, in effect, excluded from the consistency requirements.

Assurance of Compliance with Compatibility Criteria

Elimination of direct conflicts between a local plan and the ALUCP is not enough to guarantee that future land use development will adhere to the compatibility criteria. An implementation process must also be defined either directly in the local plan or by reference to a separately adopted ordinance, regulation, or other policy document. There are three facets to the process of ensuring compliance with airport land use compatibility criteria:

- ◆ **Delineation of Compatibility Criteria**—Airport land use compatibility criteria must be defined either in a policy document adopted by the county or city or through adoption of or reference to the ALUC's compatibility plan itself.
- ◆ **Identification of Mechanisms for Compliance**—The mechanisms by which applicable compatibility criteria will be tied to an individual development and continue to be enforced must be identified. Conditional use permits and development agreements are two

NOTICE OF PUBLIC HEARING
RIVERSIDE COUNTY AIRPORT LAND USE COMMISSION

A PUBLIC HEARING has been scheduled before the Riverside County Airport Land Use Commission (ALUC) to consider the application described below.

Any person may submit written comments to the ALUC before the hearing or may appear and be heard in support of or opposition to the project at the time of hearing. The proposed project application may be viewed at the Riverside County Administrative Center, 4080 Lemon Street, 14th Floor, Riverside, California 92501, Monday through Thursday from 8:00 a.m. to 5:00 p.m., except Labor Day (September 1), and by prescheduled appointment on Friday, September 5 from 8:30 a.m. to 5:00 p.m.

PLACE OF HEARING: Riverside County Administration Center
4080 Lemon St., 1st Floor Hearing Room
Riverside, California

DATE OF HEARING: September 11, 2014

TIME OF HEARING: 9:00 A.M.

CASE DESCRIPTION:

ZAP1017BA14 - City of Banning (Representative: Zai Abu Bakar) – City Case Nos. 14-2501 (General Plan Amendment) and 14-3501 (Zone Change). The City of Banning proposes to amend the General Plan land use designation and zoning classification on 18.62 acres. Specifically, the City proposes to change the land use designation and zoning of 1.45 acres consisting of nine existing developed lots located on the easterly side of Hargrave Avenue, southerly of Barbour Street (Assessor's Parcel Numbers 541-320-001 through -009), from Industrial to Low Density Residential (LDR), (0-5 dwelling units per acre), and to change the land use designation and zoning of an additional nine lots (17.17 acres) located along the southerly side of Barbour Street, easterly of Hargrave Avenue and westerly of the intersection of Barbour Street with Juarez Street (Assessor's Parcel Numbers 541-320-010 through -015, and -018 through -020), from Industrial to Very Low Density Residential (VLDR) (0-2 dwelling units per acre). (Zone D of the Banning Municipal Airport Influence Area.)

FURTHER INFORMATION: Contact Russell Brady at (951) 955-0549 or John Guerin at (951) 955-0982. The ALUC holds hearings for local discretionary permits within the Airport Influence Areas, reviewing for aeronautical safety, noise and obstructions. All other concerns should be addressed to Ms. Zai Abu Bakar of the City of Banning Community Development Department, at (951) 922-3125.

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expose Pop-up Edge[™]

 AVERY[®] 5160[®] 

543090004
KHANIM KIRSCHNER OR MICHAEL CASHE
981 CHARLES STREET
BANNING, CA 92220

541320009
ANA MUNOZ
780 S. HARGRAVE STREET
BANNING, CA 92220

541280011
JOHN PRENDERGAST
46025 E HWY 60 70
SALOME AZ 85348

541290012
HALE FAMILY BANNING PROP
19200 S REYES AVE

541280003
GERARDO RODRIGUEZ
520 S. HARGRAVE STREET
BANNING, CA 92220

541280031
RICKEY PIPPENGER
2553 W WESTWARD AVE
BANNING, CA 92220

541273011
JIM MACIAS
1984 PARK DR
PALM SPRINGS CA 92262

543090017
BELETE DEMISSIE
467 N SAN GORGONIO AVE
BANNING CA 92220

541280004
MARIA LIZAMA
540 S. HARGRAVE STREET
BANNING, CA 92220

541310023
DAGNINO FAMILY LIVING TRUST
785 S. HARGRAVE STREET
BANNING, CA 92220

541280014
TODD HILDE
2530 XENTUM LN N
MINNEAPOLIS MN 55441

541310020
KARINA FRANCO
621 S. HARGRAVE STREET
BANNING, CA 92220

541273001
ANTHONY MEDWAY
11580 WELEBIR ST
LOMA LINDA CA 92354

541280022
ROBERT REYNOLDS
4936 MEADOW WAY
BANNING CA 92220

541310021
KARINA FRANCO
7255 BAYMEADOWS WAY
JACKSONVILLE FL 32256

543090003
ILSON VELARDE
1766 N SAN GORGONIO
BANNING CA 92220

541320007
ANGELICA GAMBOA
3466 BADLEY DR
MIRA LOMA CA 91752

543230013
JESUS MARTINEZ
956 DRIFTWOOD CIRCLE
BANNING, CA 92220

543230006
JUNE WAGNER
957 DRIFTWOOD CIRCLE
BANNING, CA 92220

541320020
LARRY LARSON
90503 LEWIS RD
WARRENTON OR 97146

543230003
JEREMY HAGEN
981 DRIFTWOOD CIRCLE
BANNING, CA 92220

541320012
KRYSTAL CRUZ
300 S HIGHLAND SPRING 6C
BANNING CA 92220

541280021
DENNIS PIERCE
48 DOC HOLLIDAY LN
CENTRAL UT 84722

541320013
JOSEPH SMITH
1060 E. BARBOUR STREET
BANNING, CA 92220

541330005
CR & R INC
11292 WESTERN AVE
STANTON CA 90680

541320018
GABRIEL MANZANO
1190 E. BARBOUR STREET
BANNING, CA 92220

541280005
JIM MACIAS
1984 PARK DR
PALM SPRINGS CA 92262

543230009
HORACIO HERNANDEZ
933 DRIFTWOOD CIRCLE
BANNING, CA 92220

541280039
WAUSAU TILE CO
P O BOX 1520
WAUSAU WI 54402

541320002
VERNELL SEALS
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541310019
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MANHATTAN BEACH CA 90266

541280018
JOSEPH OLVERA
1073 E. BARBOUR STREET
BANNING, CA 92220

541320005
NANCY MILLS
PO BOX 2850,
BIG BEAR CITY CA 92314

541320011
RONALD MORRIS
12226 CHINABERRY ST
YUCAIPA CA 92399

541280015
RICHARD WHEELER
1017 E. BARBOUR STREET
BANNING, CA 92220

541280016
JOHN ROCHA
1047 E. BARBOUR STREET
BANNING, CA 92220

541273009
MACIAS HENRY B ESTATE OF
849 W NORTH PARK BLV
SAN BERNARDINO CA 92407

541280040
BERTRAM RUDOLPH
P O BOX 2302
CARMEL CA 93921

543090019
ROBERT RICHEY
2331 CLIFF DR
NEWPORT BEACH CA 92663

543230012
JACK CRAMP
1370 NORTH D ST NO 109
SAN BERNARDINO CA 92405

541320019
THOMAS GARCIA
3788 REBLUFF ST
BANNING CA 92220

543230007
THOMAS FELIX
949 DRIFTWOOD CIRCLE
BANNING, CA 92220

541320010
CARL MORRIS
1166 N 4TH ST
BANNING CA 92220

541273012
ELSA MACIAS
1224 S HATHAWAY ST
BANNING CA 92220

541280037
VERNER BURGIN
837 E BARBOUR ST
BANNING CA 92220

541273010
JIM MACIAS
1984 PARK DR
PALM SPRINGS CA 92262

543230008
JOSE SANCHEZ
941 DRIFTWOOD CIRCLE
BANNING, CA 92220

541280027
TONY ORTEGA
562 S. HARGRAVE STREET
BANNING, CA 92220

541280017
RICHARD HADERER
3449 ENTERPRISE AVE
HAYWARD CA 94545

543230010
MANUEL PEREZ
932 DRIFTWOOD CIRCLE
BANNING, CA 92220

541320006
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720 S. HARGRAVE STREET
BANNING, CA 92220

541320004
GERALDINE WILLIS
P O BOX 1242
BANNING CA 92220

541280020
JAMIE MEDVEDEF
1103 E. BARBOUR STREET
BANNING, CA 92220

541280030
RICKEY PIPPENGER
2553 W WESTWARD AVE
BANNING CA 92220

541273003
MARIALINA NEVAREZ
1131 HOODS CROSS RD LOT 1
ONEONTA AL 35121

543230005
TIMOTHY SALAS
965 DRIFTWOOD CIRCLE
BANNING, CA 92220

541273002
LAWRENCE MOORE
737 E. BARBOUR STREET
BANNING, CA 92220

541280024
ANGELA HUGHES
545 S. JUAREZ STREET
BANNING, CA 92220

541280025
SPSSM INVESTMENTS VI
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EL MONTE CA 91731

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541320020
LARRY LARSON
90503 LEWIS RD
WARRENTON OR 97146

541320012
KRYSTAL CRUZ
300 S. HIGHLAND SPRING 6C
BANNING, CA 92220

541320013
JOSEPH SMITH
1060 E. BARBOUR STREET
BANNING, CA 92220

541320018
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541320004
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541320003
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541320001
THOMAS BURNEY
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BANNING, CA 92220

541320014
FRANCISCO CHAVEZ
1289 W NICOLET ST
BANNING CA 92220

541320015
JOSEPH MERAZ
1116 E. BARBOUR STREET
BANNING, CA 92220

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ATTN: ZAI ABU BAKAR
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BANNING, CA 92220

543230004
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973 DRIFTWOOD CIRCLE
BANNING, CA 92220

541320014
FRANCISCO CHAVEZ
1289 W NICOLET ST
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543090016
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13856 MEADOW VIEW LN
YUCAIPA CA 92399

543080008
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PLANNING DIVISION
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BANNING CA 92220

541320015
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541320003
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541310024
JOSE MARQUEZ TOSTADO
720 E. BARBOUR STREET
BANNING, CA 92220

541310022
MARIA TORRES
657 S. HARGRAVE STREET
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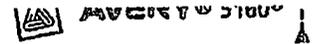
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APPLICATION FOR MAJOR LAND USE ACTION REVIEW
RIVERSIDE COUNTY AIRPORT LAND USE COMMISSION

ALUC Identification No.

2API017BA14

PROJECT PROPONENT (TO BE COMPLETED BY APPLICANT)

Date of Application June 22, 2014
 Property Owner Various Phone Number (951) 922-3131

Mailing Address

Agent (if any) City of Banning Phone Number (922) 922-3131
 Mailing Address 99 East Ramsey Street
Banning, CA 92220

PROJECT LOCATION (TO BE COMPLETED BY APPLICANT)

Attach an accurately scaled map showing the relationship of the project site to the airport boundary and runways

Street Address Southeast corner of Barbour & Hargrave (see Exhibit 1)

Assessor's Parcel No. See Exhibit 2 Parcel Size Total 18.62 acres
 Subdivision Name None Zoning Classification Currently Industrial
 Lot Number None

PROJECT DESCRIPTION (TO BE COMPLETED BY APPLICANT)

If applicable, attach a detailed site plan showing ground elevations, the location of structures, open spaces and water bodies, and the heights of structures and trees; include additional project description data as needed

Existing Land Use (describe) The 18 parcels are currently designated as Industrial on the General Plan and zoning map (Exhibit 3)

Proposed Land Use (describe) The General Plan Land Use & Zoning are proposed to be changed from Industrial to Low Density Residential for Assessor's Parcel Numbers 541-320-001 through 541-320-009 & changing from Industrial to Very Low Density Residential for Assessor's Parcel Numbers 541-320-010 through 541-320-015 & 541-320-018 through 541-320-020.

For Residential Uses Number of Parcels or Units on Site (exclude secondary units) 18
 For Other Land Uses Hours of Use Not Applicable.
 (See Appendix C) Number of People on Site Maximum Number No development proposed at this time.
 Method of Calculation Not Applicable.

Height Data Height above Ground or Tallest Object (including antennas and trees) Not Available ft.
 Highest Elevation (above sea level) of Any Object or Terrain on Site Not Available ft.

Flight Hazards Does the project involve any characteristics which could create electrical interference, confusing lights, glare, smoke, or other electrical or visual hazards to aircraft flight? Yes No
 If yes, describe No development is proposed at the time. If the General Plan Amendment & Zone Change are adopted by the City Council, Low Density & Very Low Density Residential limit building height to 35' maximum.

| REFERRING AGENCY (APPLICANT OR JURISDICTION TO COMPLETE) | | |
|--|--|--|
| Date Received | June 22, 2014 | Type of Project |
| Agency Name | City of Banning | <input checked="" type="checkbox"/> General Plan Amendment |
| Staff Contact | Ms. Zal Abu Bakar | <input checked="" type="checkbox"/> Zoning Amendment or Variance |
| Phone Number | (951) 922-3131 | <input type="checkbox"/> Subdivision Approval |
| Agency's Project No. | General Plan Amendment (GPA) No. 14-2501 | <input type="checkbox"/> Use Permit |
| | Zone Change (ZC) No. 14-3501 | <input checked="" type="checkbox"/> Public Facility |
| | | <input type="checkbox"/> Other |

A. **NOTICE:** Failure of an applicant to submit complete or adequate information pursuant to Sections 65940 to 65948 inclusive, of the California Government Code, MAY constitute grounds for disapproval of actions, regulations, or permits.

B. **SUBMISSION PACKAGE:**

ALUC REVIEW

- 1 Completed Application Form
- 1 Project Site Plan – Folded (8-1/2 x 14 max.)
- 1 Elevations of Buildings - Folded
- 1 Each . 8 ½ x 11 reduced copy of the above
- 1 8 ½ x 11 reduced copy showing project in relationship to airport.
- 1 Set . Floor plans for non-residential projects
- 4 Sets . Gummmed address labels of the Owner and representative (*See Proponent*).
- 1 Set . Gummmed address labels of all property owners within a 300' radius of the project site. If more than 100 property owners are involved, please provide pre-stamped envelopes (size #10), with ALUC return address.
- 4 Sets . Gummmed address labels of the referring agency (City or County).
- 1 Check for Fee (See Item "C" below)

STAFF REVIEW (Consult with ALUC staff planner as to whether project qualifies)

- 1 Completed Application Form
- 1 Project Site Plans – Folded (8-1/2 x 14 max.)
- 1 Elevations of Buildings - Folded
- 1 8 ½ x 11 Vicinity Map
- 1 Set . Gummmed address labels of the Owner and representative (*See Proponent*).
- 1 Set . Gummmed address labels of the referring agency.
- 1 Check for review–See Below

RECEIVED
 JUN 23 2014
 CITY OF BANNING
 PLANNING DEPARTMENT
 1000 WEST 1ST STREET
 BANNING, CA 92410
 (951) 922-3131
 FAX (951) 922-3132
 WWW.CITYOFBANNING.COM



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COMMUNITY DEVELOPMENT

September 8, 2014

Ed Cooper.
Director
Airport Land Use Commission
Riverside County Administrative Center
4080 Lemon Street, 14th Floor
Riverside, CA 92501

Subject: Case Number ZAP1017BA14 - General Plan Amendment No. 14-2501 and Zone Change No. 14-3501 (Assessor's Parcel Numbers 541-320-001 through -009 and 541-320-010 through -015, and -018 through -020) ["Project"]

Dear Mr. Cooper:

The Airport Land Use Commission ("Commission") staff report dated September 11, 2014 recommends that the Commission make an inconsistency finding for the above-mentioned project in relation to the Banning Airport Land Use Plan. Before the Commission makes a final determination of inconsistency, I am requesting that a public hearing on the project be continued to November 13, 2014 to allow time for City staff to work with the Commission's staff to determine the land use and zoning alternatives where consistency finding could be made.

In addition, the continuation would allow time for City staff to present a staff report to the Banning City Council for their policy discussion and direction on the land use and zoning change for the Project so that the Commission could make a consistency finding.

If you have any questions regarding this letter, please e-mail me at zabubakar@ci.banning.ca.us or call me at (951) 922-3131.

Sincerely,

Zai Abu-Bakar
Community Development Director

cc: Homer Croy, Interim City Manager
June Overholt, Administrative Services Director/Deputy City Manager
Duane Burk, Public Works Director

CITY COUNCIL AGENDA

Date: November 12, 2014
TO: Honorable Mayor and City Council
FROM: Homer Croy, Interim City Manager
SUBJECT: Report of Officers – Purchasing System

Recommendation: Approve the Purchasing Policy Addendum (Policy No. B-23 (a) to prioritize governing documents related to purchasing and provide methods for improving communication and transparency to the City Council related to contracts signed within the City Manager's authority.

Discussion: During 2014, it became apparent that the Purchasing Policy B-23 adopted in August 2001 and the Purchasing Ordinance updated in 2005 and 2007 include contradictory procedures. Because the Policy is an older document, most staff were following the Policy. With the passage of time and changes in personnel, it is unclear if any effort was made to train staff on the updated Ordinance. In addition, the Ordinance assumes a centralized purchasing system. With the economic downturn, the Purchasing Manager position was eliminated and the purchasing functions were decentralized. The transition to a decentralized system occurred with limited training for the staff assuming these new duties. The combination of the above factors have led to challenges in standardizing the purchasing functions in the City.

Both Administrative Policy B-23 and the Purchasing System described in the Banning Municipal Code Chapter 3.24 need to be updated to resolve any contradictory procedures and reflect a decentralized purchasing function. Until such time when these City documents can be analyzed, updated, and evaluated in relationship to State (i.e. State Public Contract Code) or Federal codes, and any other best practices in the industry, staff is recommending that the attached Purchasing Policy Addendum (Policy B-23 (a)) be implemented.

Included in the Policy is a provision addressing Council's concern regarding the City Manager discretionary signature authority limit of \$25,000. The recommended policy addendum provides the following language: "*Section 3.24.050 to 3.24.090 – City Manager signature authority shall remain at \$25,000. However, on a quarterly basis, the City Manager shall be responsible for providing City Council a report listing the contracts signed during the previous quarter. Such list shall include the vendor name, contract amount, and purpose of work.*"

Revision of the Ordinance and the Policy will require time and thoughtful analysis. Staff is recommending that the Council subcommittee (Budget and Finance Committee) be assigned the task to review and edit the recommended changes submitted by staff and the City Attorney's office before presentation to the full council. While staff and the Council subcommittee are going through

this process, the attached Addendum will provide clarity to staff on which documents govern the purchasing process.

Fiscal Impact: The proposed policy addendum has no fiscal impact at this time. It should result in standardized practices that may result in budget savings.

RECOMMENDED BY:



Homer Croy, Interim City Manager

APPROVED BY:

June Overholt, Administrative Services
Director/Deputy City Manager

| | | | |
|---|--|--------------------|---|
|  | <h2 style="margin: 0;">City of Banning Purchasing Policy Addendum</h2> | | SECTION or Policy No: B-23 (a) |
| | | | ORIGINATING DEPARTMENT: Administrative Services |
| | | | Reference: Purchasing |
| SUPERSEDES: n/a | NEW EFFECTIVE DATE: November 12, 2014 | PAGE 1 of 2 | |
| APPROVED BY: City Council approval November 12, 2014 | | | |

PURPOSE

To prioritize governing documents related to purchasing and provide methods for improving communication and transparency to the City Council related to contracts signed within the City Manager’s authority.

BACKGROUND

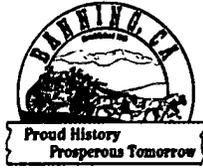
During 2014, it became apparent that the Purchasing Policy B-23 adopted in August 2001 and the Purchasing Ordinance updated in 2005 and 2007 include contradictory procedures. Because the Policy is an older document, most staff were following the Policy. With the passage of time and changes in personnel, it is unclear if any effort was made to train staff on the updated Ordinance. In addition, the Ordinance assumes a centralized purchasing system. With the economic downturn, the Purchasing Manager position was eliminated and the purchasing functions were decentralized. The transition to a decentralized system occurred with limited training for the staff assuming these new duties. The combination of the above factors have led to challenges in standardizing the purchasing functions in the City.

Both Administrative Policy B-23 and the Purchasing System described in the Banning Municipal Code Chapter 3.24 need to be updated to resolve any contradictory procedures and reflect a decentralized purchasing function. Until such time when these City documents can be analyzed, updated, and evaluated in relationship to State (i.e. State Public Contract Code) or Federal codes, and any other best practices in the industry, the following policy will provide the guidelines to follow.

POLICY

Chapter 3.24 – Purchasing System – of the Banning Municipal Code is the primary governing document.

- Section 3.24.010 – The Purchasing System is decentralized until further notice in accordance with Section 3.24.120.
- Section 3.24.030 – The Purchasing Officer shall be the Administrative Services Director or designee per direction of the City Manager.



City of Banning Purchasing Policy Addendum

| |
|---|
| SECTION or Policy No: B-23 (a) |
| ORIGINATING DEPARTMENT: Administrative Services |
| Reference: Purchasing |
| PAGE 2 of 2 |

| | |
|---------------------------|---|
| SUPERSEDES: n/a | NEW EFFECTIVE DATE: November 12, 2014 |
|---------------------------|---|

APPROVED BY:
City Council approval November 12, 2014

- Section 3.24.030 – Functions and duties of the Purchasing Officer are decentralized but verified by the designated Purchasing Officer.
- Section 3.24.050 to 3.24.090 – City Manager signature authority shall remain at \$25,000. However, on a quarterly basis, the City Manager shall be responsible for providing City Council a report listing the contracts signed during the previous quarter. Such list shall include the vendor name, contract amount, and purpose of work.

Administrative Policy B-32: The Municipal Code references “administrative policies and procedures implementing this chapter” in several sections of the Code. Administrative Policy B-23 “Purchasing Practices and Approval Requirements Policy” is the administrative policy and procedure document that supports the Municipal Code.

- Where the Municipal Code is silent, Policy B-23 should be used for direction.
- Where Policy B-23 conflicts with the Municipal Code, the Municipal Code prevails.
- Where neither the Municipal Code nor Policy B-23 provide direction for a specific situation, the City Manager shall provide the final approval.
- Exhibit A – Limited Purchase approval form is rescinded. Documentation is verified by both the Financial Services Specialist that processes the purchases orders and the Deputy Finance Director that verifies the purchase orders for signature. Forms are updated from time to time as needed.
- Exhibit B – Standard Agreement for Consultant Services template is rescinded. The contract template has been updated since Aleshire and Wynder, LLP became the City Attorney. The contract template is updated periodically to reflect changes in laws and best practices.

State or Federal laws governing purchasing practices as it relates to grants or projects will prevail where applicable. For example, Municipal Code Section 3.24.100 references the State Public Contract Code (commencing at Section 20160).

Chapter 3.24 - PURCHASING SYSTEM**Sections:**

FOOTNOTE(S):

--- (2) ---

Note—Prior ordinance history: Ord. Nos. 657, 678, 704, 817, 998, 1054, 1061, 1203 and 1266.**3.24.010 - Adoption of purchasing system.**

The purpose of this chapter is to establish efficient procedures for the purchase of supplies, services and equipment at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority for the purchasing function, and to assure the quality of purchases. Therefore, a centralized purchasing system is adopted and the purchasing officer is vested with the authority for the purchase of all city supplies, services and equipment.

*(Code 1965, § 18A-1.)***3.24.020 - Definitions.**

Unless otherwise indicated, the following definitions shall apply to all provisions of this chapter:

"City manager" means the city manager or person designated by the city manager to perform all or some of the duties prescribed in this chapter.

"Contract" means any type of legally recognized agreement to provide goods or services, including formal contractual agreements and informal letter contracts, but excluding purchase orders as defined by this section.

"Cooperative purchase agreement" means the purchase of goods or services utilizing a contract entered into by another government entity, when it is in the city's best interest. The procedures of California Government Code Section 10324 authorize the state to make purchases on behalf of the city when it is to the city's advantage. Other California municipalities invite participation on purchases using the increased volume to result in better pricing for all participants.

"Emergency" for purposes of public projects shall have that meaning provided in Section 1102 of the Public Contract Code, which reads: "Emergency," as used in this Code, means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

"Emergency," for all other purposes, means a public calamity or disaster; or, an immediate procurement is essential to protect the public health or safety, or to avoid interruption of essential city operations.

"Local business" means a business firm with fixed offices or distribution points located within the boundaries of the city, with a City of Banning street address. Post office box numbers or residential addresses may not be used solely to establish status as a local business. The business must have a

3/0

valid City of Banning business license prior to the commencement of the contract.

"Professional services" mean all services performed by persons in a professional occupation, including but not limited to, consulting and performance services for accounting, auditing, computer hardware and software support, engineering, architectural, planning, environmental, redevelopment, financial, economic, personnel, social services, legal, management, communication and other similar professional functions which may be necessary for the operation of the city.

"Public facility" means any city-owned or operated property, infrastructure or facility.

"Public project," as defined in Section 20161 of the Public Contract Code, means: (1) a project for the erection, improvement, painting, or repair of public buildings and works; (2) work in or about streams, bays, waterfronts, embankments, or other work for protection against overflow; (3) street or sewer work except maintenance or repair; (4) furnishing supplies or materials for any such project, including maintenance or repair of streets or sewers.

"Purchase" means buy, lease or rent supplies, equipment or services.

"Purchase order" means a formal document authorizing the purchase of supplies, equipment, or services from a vendor, and executed by the purchasing officer as a stand-alone agreement or pursuant to the authority granted in a contract. It is the vendor's authorization to deliver and invoice goods as specified. It is used to communicate to the vendor the city's terms and conditions and authorizes an encumbrance of city funds.

"Purchasing Officer" means the city manager or his or her designee(s). Initially, the city manager designates the finance director to act as the purchasing officer. Pursuant to this section, the city manager may change his or her designation at any time.

"Requisition" means an internal document used to communicate to the purchasing officer and coordinate requests for supplies, equipment and services.

"Sole source" means the goods, supplies or services are available from only one vendor and there is no permissible substitute.

(Code 1965, § 18A-2.)

3.24.030 - Purchasing officer.

There is created the position of purchasing officer, who shall be appointed by the city manager. The purchasing officer shall have the general supervision of all purchasing functions of the city. The duties of the purchasing officer may be combined with those of any other office or position. Subject to the supervision of the city manager, the purchasing officer shall have the authority to:

- A. Negotiate contracts on behalf of the city for the purchase of supplies, equipment and services in accordance with this chapter, which contracts will be subject to award by the city council or city manager and execution by the mayor or city manager;
- B. Negotiate and execute purchase orders on behalf of the city, for the purchase of supplies,

- equipment and services required by the city in accordance with this chapter;
- C. Prepare, and implement policies and procedures governing the purchase, bidding, contracting, storing, distribution and disposal of supplies, services and equipment for the city;
 - D. Prescribe and maintain such forms as may be reasonably necessary to the implementation of this chapter and any other policies and procedures approved by the city manager consistent with this chapter;
 - E. Review the working details, drawings, plans and specifications for any projects or purchases requiring such review in this chapter;
 - F. Inspect or supervise the inspection of purchased supplies, services and equipment to ensure conformity with any specifications established or required by the city;
 - G. Transfer among departments any supplies, services and equipment not needed by one such department, but which are necessary for the operations of one or more other departments;
 - H. Sell any supplies and equipment not needed for public use or that may become unsuitable for their intended use;
 - I. Develop and maintain any bidder's list, contractor's list or vendor's catalog file necessary to the operation of this chapter and any other policies and procedures approved by the city manager consistent with this chapter.

(Code 1965, § 18A-3.)

3.24.040 - Types of contracts.

- A. Formal contracts shall be used for the purchase of goods, equipment, or services whenever those goods, equipment, or services are sought by way of a request for proposal or when the purchasing officer determines that, due to the complexity, risk, or monetary value of the goods, equipment, or services sought, a formal agreement with detailed procedural and substantive protections of the city's interests is necessary.
- B. Informal letter contracts shall be used when the purchasing officer determines that due to a lack of complexity, risk, or monetary value, a purchase of services need not include the detailed procedural and substantive protections of the city's interests.
- C. Purchase orders are formal documents requesting the delivery of specific goods, equipment, or services and promising payment therefor. They are issued by the purchasing officer and must be used in conjunction with formal contracts or else as provided in this chapter as stand-alone documents for all city purchases with the exception of purchases made pursuant to short form purchase orders or other methods consistent with this chapter and the policies and procedures implementing this chapter.
- D. Open purchase orders are formal agreements whereby the city contracts with a vendor to provide services, tools and equipment or supplies on a just-in-time basis. They are encumbered purchase orders with a maximum dollar amount that may be purchased per transaction and a maximum dollar amount that can be spent through the term of the contract. They must be used in conjunction with a formal contract.
- E. Short form purchase orders are formal documents that provide a method whereby department directors may purchase nonrepetitive, low volume, low-cost goods or services valued at less than

3/2

one thousand dollars.

(Code 1965, § 18A-4.)

3.24.050 - City manager authorization to execute contracts, conveyances and instruments.

Pursuant to California Government Code Section 40602, the mayor must execute all contracts, conveyances, and instruments requiring the city seal on behalf of the city, unless another city officer or employee is authorized to do so. The city manager and/or his or her designee(s) are authorized to execute contracts, conveyances, and instruments requiring the city seal on behalf of the city.

(Code 1965, § 18A-5; Ord. No. 1440, § 2, 1-24-12)

3.24.060 - Procurement methods.

- A. The city shall secure supplies, services and equipment at the lowest total cost commensurate with the quality and scope needed, and subject to any limitations imposed by state law. The city shall secure professional services based upon demonstrated competence, professional qualifications and suitability for the project in general. The city may consider cost of professional services, if the purchasing officer determines it to be a relevant factor under the circumstances.
- B. The purchasing officer shall develop, for approval by the city manager, such policies and procedures as are necessary to implement the provisions of this chapter. The policies and procedures shall be written and implemented in such a way to:
 - 1. Encourage open and competitive bidding, where appropriate;
 - 2. Provide equal opportunity based on merit;
 - 3. Make each selection process free of favor, prejudice and discrimination;
 - 4. Provide for efficient and timely acquisition of needed supplies, services and equipment;
 - 5. Provide effective fiscal controls.
- C. In purchasing, supplies, services and equipment, the city shall make use of competitive bidding, both formal and informal, whenever required by law, this chapter, or any policies and procedures approved by the city manager consistent with this chapter.
- D. The city shall comply with all federal and state bidders' security and bonding requirements and all prevailing wage laws applicable to each contract or purchase.
- E. The city shall not split a project, work, service or purchase into small projects, works, services or purchases for the purpose of avoiding any bidding or contracting requirements of this Code.

(Code 1965, § 18A-6.)

3.24.070 - Formal bid procedures.

Except as otherwise provided in this chapter, purchases for supplies, equipment and services (except public projects) with a value of more than twenty-five thousand dollars shall be awarded by the city council using a formal procedure. Where the department requesting the purchase has a specification that clearly defines the item or service requested, bids shall be sought pursuant to the requirements prescribed in subsection A of this section and administrative policies and procedures implementing this chapter. Where the department is cognizant of a desired end, but wishes to give vendors flexibility to meet that end in the most efficient means necessary, proposals will be sought pursuant to the requirements prescribed in subsection B of this section and the administrative policies

and procedures implementing this chapter.

A. Formal Bidding.

1. Notice Inviting Bids. Notice inviting formal bids shall: (a) describe the supplies, services or equipment to be purchased; (b) state where bid plans and specifications may be obtained; (c) state the date, time and place for opening of sealed bids; and (d) include any other information required by state or local law, as determined by the city attorney. Notice inviting bids shall be published at least ten days prior to the date set for opening of the bids. Notice shall be published at least once in a newspaper of general circulation printed and published in the city, or, if there is no such newspaper, in a newspaper of general circulation which is circulated in the city, and shall be posted at City Hall.
2. Proprietary Products. Upon approval of the purchasing officer, if the director of the using department certifies that, to the best of his or her knowledge, the product or service is proprietary in nature and can be obtained only from a limited number of vendors or contractors, and that no equivalent products or services are available, the notice inviting bids may be sent exclusively to such vendor(s) or contractor(s).
3. Bidder's Security and Bonds. The purchasing officer shall have the authority to require a bid security in the amount of ten percent of the value of the contract, or a performance bond and/or labor and materials bond in such amount as is necessary to protect the best interests of the city. If the purchasing officer requires a bid security or performance bond, the form and amount of the bond shall be described in the notice inviting bids.
4. Formal Bid Opening Procedure. The purchasing officer, or his designee, shall publicly open all bids at the time and place stated in the public notice. A tabulation of all bids received shall be available for public inspection in the purchasing office during regular business hours for a period of not less than thirty calendar days after bid opening.
5. Tie Bids. If two or more bids are received which are in all respects equal, the city council may accept the one it chooses.
6. Acceptance of Formal Bid. Contracts in the amount of twenty-five thousand dollars or less will be awarded by the city manager. Contracts for more than twenty-five thousand dollars will be awarded by the city council. The determination of "lowest responsible bidder" shall be at the discretion of the awarding body pursuant to findings and recommendations presented by the purchasing officer at the time of award. The awarding body may reject any or all bids received, and may waive any minor irregularities in each bid received.
7. Five-Year Term Limitation. No Professional service contracts, general maintenance contracts, or other contract work contracts shall extend for a period of more than five years, including any authorized extensions.
8. Failure to Enter Into Contract. A notice of award letter shall be sent to any successful bidder required to execute a contract with the city. Failure to enter into a contract or refusal to accept a purchase order within ten calendar days after the notice of award shall result in the forfeiture of the awardee's bid bond, if any. Award shall thereafter be made to the next lowest responsible, responsive bidder.

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B. Request for Proposal/Qualifications.

1. Notice Inviting Request for Proposals/Qualifications. A notice inviting request for proposals/qualifications shall: (a) describe the supplies, services or equipment to be purchased; (b) state where the complete request for proposal may be obtained; (c) state the date, time and place for receipt of the proposals; and (d) include any other information required by state or local law, as determined by the city attorney. Notice inviting proposals shall be published at least ten days prior to the date set for receipt of the proposals. Notice shall be published at least once in a newspaper of general circulation printed and published in the city, or, if there is no such newspaper, in a newspaper of general circulation which is circulated in the city, and shall be posted at City Hall.
2. Proprietary Products or Services. Upon approval of the purchasing officer, if the director of the using department certifies that, to the best of his or her knowledge, the product or service is proprietary in nature and can be obtained only from a limited number of vendors or contractors, and that no equivalent products or services are available, the notice inviting proposals may be sent exclusively to such vendor(s) or contractor(s).
3. Opening of Request for Proposals/Qualifications. The purchasing officer shall open the proposals after the date and time as set forth in the notice inviting proposals/qualifications. The purchasing officer and the using department director or his or her designee will evaluate the proposals based on the vendor's understanding of the work required by the city, demonstrated competence and professional qualifications necessary for performance of the work and other factors that result in the best interest of the city.
4. Acceptance of Proposals/Qualifications. Contracts in the amount of twenty-five thousand dollars or less will be awarded by the city manager. Contracts for more than twenty-five thousand dollars will be awarded by the city council. The city manager or the city council may reject any or all proposals received, and may waive any minor irregularities in each proposal received.
5. Failure to Enter Into Contract. A notice of award letter shall be sent to any successful proposer required to execute a contract with the city. Failure to enter into a contract or refusal to accept a purchase order within ten calendar days after the notice of award shall result in the forfeiture of the awardee's bid bond if any. Award shall thereafter be made to the next lowest responsible, responsive proposer.

- C. All purchases for services to any public facility must have a duly executed contract, in addition to a purchase order.

(Code 1965, § 18A-7.)

3.24.080 - Open market or informal bid procedures.

Purchases of supplies, equipment and services (other than professional services and public projects) with a value in the amount of twenty-five thousand dollars or less may be made in the open market to the bidder offering the most advantageous quote, using an informal procedure pursuant to the requirements prescribed in subsections A through E of this section, provided, however, all bidding

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may be dispensed with for purchases of supplies, equipment and services having a total estimated value of one thousand dollars or less:

- A. Open market purchases shall, wherever possible, be based on at least three quotes, and shall be awarded to the vendor offering the most advantageous quote to the city after consideration of price, quality, durability, servicing, delivery time, standardization, and other factors.
- B. The purchasing officer shall solicit quotes by written and/or electronic request to prospective vendors, or by telephone, or by public notice posted on a public bulletin board at the city offices.
- C. All purchases for services to any public facility for one thousand dollars or less may be made by purchase order.
- D. All purchases for services to any public facility for more than one thousand dollars, but less than five thousand dollars must have a duly executed contract, in addition to a purchase order.
- E. Purchase of goods, supplies and equipment with a value of one thousand dollars or less may be made by department personnel with the approval of the department director as provided in this chapter and in administrative policies and procedures implementing this chapter.

(Code 1965, § 18A-8.)

3.24.090 - Professional services purchasing procedures.

Contracts for professional services shall be awarded to the contractor who will best serve the interests of the city, taking into account demonstrated competence, professional qualifications and suitability for the project in general. The city may consider cost of professional services, if the purchasing officer determines it to be a relevant factor under the circumstances. Procurement of professional services will be made pursuant to the requirements prescribed in subsections A through D of this section:

- A. Professional services contracts of twenty-five thousand dollars or less shall be awarded by the city manager, upon recommendation of the director of the department responsible for the project. Wherever possible, procurement of professional services shall be pursuant to the formal bidding procedure as prescribed in Section 3.24.070(B) of this chapter.
- B. Professional services contracts of more than twenty-five thousand dollars shall, except as otherwise provided in this chapter, be awarded by the city council pursuant to the formal bidding procedure as prescribed in Section 3.24.070(B) of this chapter.
- C. In the event that it is determined by the city manager, that it would be in the best interest of the city for services to be provided by a specific consultant, a contract may be awarded based on negotiations with the specific consultant. Contracts in the amount of twenty-five thousand dollars or less will be awarded by the city manager and contracts for more than twenty-five thousand dollars will awarded by the city council.
- D. All procurement of professional services will be made by a duly executed professional services agreement, in addition to a purchase order.

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- E. Five-Year Term Limitation. No professional service contracts, general maintenance contracts, or other contract work contracts shall extend for a period of more than five years, including any authorized extensions.

(Code 1965, § 18A-9.)

3.24.100 - Public project bid procedure.

Notwithstanding any provision of this chapter to the contrary, all public project contracts for more than five thousand dollars must be contracted for and let by the procedures as set forth in Division 2, Part 3, Chapter 1, Article 4 of the Public Contract Code (commencing at Section 20160). This includes the purchase of supplies or materials for any such project, including maintenance or repair of streets or sewers. Award of all public projects pursuant to this section will be made by the City Council.

(Code 1965, § 18A-10.)

3.24.110 - Encumbrance of funds.

Except in cases of emergency, orders for supplies, services, and equipment may not be processed unless there exists an unencumbered appropriation in the fund account against which such purchase is to be charged.

(Code 1965, § 18A-11.)

3.24.120 - Exemption from centralized purchasing.

The purchasing officer, with the approval of the city manager, may authorize in writing any department to purchase or contract for specified supplies, equipment or services independently of the purchasing division, but shall require that such purchases or contracts be made in conformity with this chapter and all applicable administrative policies and procedures. Periodic reports from the department on purchases and contracts made under this authorization will be required. The purchasing officer may also rescind such authorization with written notice to the department concerned.

(Code 1965, § 18A-12.)

3.24.130 - Exceptions to bidding requirements.

Notwithstanding any provision of this chapter to the contrary, the competitive bidding procedures and requirements may be dispensed within any of the following instances:

- A. When an "Emergency" has been determined to exist pursuant to the official policies and procedures implementing this chapter;
- B. When the commodity is a sole source;
- C. When the price is less than one thousand dollars;
- D. When the purchasing officer determines the commodity can be procured using a cooperative purchase agreement (e.g., through CMAS or GSA) and, the price to the city is equal to or better than the price to that public agency;
- E. When the commodity being purchased is gasoline, diesel or aviation fuel;
- F. When the city council determines, in accordance with applicable law, that a competitive

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market does not exist, and no competitive advantage will be gained by the bidding process;

G. When no bids are received on formal or informal bidding procedures.

(Code 1965, § 18A-13; amended during 2007 recodification.)

3.24.140 - Local preference.

- A. In order to promote the economic health of the city and to encourage local participation in the procurement process, the city council shall give a preference to local businesses, to the extent that such preference does not give an unlawful advantage to such local business over its foreign competition, and is otherwise permitted by law.
- B. In the assessment of any responsive bid submitted by a local business pursuant to this chapter, the amount bid by the local business shall be lowered by the local preference percentage, for purposes of award, than the amount actually bid. The local preference percentage will be set by city council resolution.

(Code 1965, § 18A-14.)

(Ord. No. 1408, § 2, 8-25-09)

3.24.150 - Recycled products.

It is the policy of the City of Banning to purchase recycled products whenever possible to the extent that such use does not negatively impact the health, safety or operational efficiency of the city. The purchase of products which cannot be recycled or reused is strongly discouraged.

(Code 1965, § 18A-15.)

3.24.160 - Disposal of city surplus property.

The city manager or his or her designee is authorized to establish policies and procedures for the identification and disposal of city's surplus property, including scrap material. Each determination that an item constitutes scrap material or city's surplus property shall be in writing. Any item with a value of ten thousand dollars or less may be declared surplus by the purchasing officer. Any item with a value of ten thousand dollars or more shall be declared surplus by the city council. Surplus property may not be purchased by a city official or an employee of the city, except at public auction or through other sealed bid procedures. Disposal of city's surplus property shall be made pursuant to this chapter and City of Banning Administrative Policy No. B-24.

(Code 1965, § 18A-16.)

3.24.170 - Conflict of interest.

No officer or employee of the city shall have any financial interest in the transaction of business in connection with the purchase of supplies, equipment and services for the city. No officer or employee of the city may contract with any person related to any officer or employee of the city by blood or marriage within the third degree for supplies, services or equipment, unless the purchase is made by a competitive bid process, and the person related submits the lowest responsible bid. No officer or employee shall participate in the procurement or selection process when such officer or employee has a relationship with a person or business entity seeking a contract under this chapter, which would subject such officer or employee to violation of the Government Code or this chapter.

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(Code 1965, § 18A-17.)

CITY OF BANNING
ADMINISTRATIVE POLICY

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|---|----------------------------|----------------------------|
| Subject: Formal Bid Procedures | | Policy No. B - 4 |
| Reference: Chapter 18A of the City Code | Effective 3-3-78 | Page 1 of 1 |

PURPOSE

To establish a uniform guide for the preparation and processing of formal bid documents.

BACKGROUND

In the past, there was a wide variety of documents utilized for formal bids. There was no central control over bids and bid documents. Recently, this lack of control has become more evident. To insure compliance with the City Code, a formal policy must be adopted.

POLICY

1. All bids, in excess of \$5,000, are required to be handled in a formal manner.
2. All bid documents will be prepared following the standard bid document format, available in the City Clerk's Office.
3. The responsible department head shall prepare and take the appropriate action to have the required legal notice published in the local newspaper.
4. All bid documents must be received by the City Clerk for public opening. Only the City Clerk, or duly appointed Deputy City Clerks, are authorized to open bids.
5. The department head preparing the bid documents is responsible for coordinating the bid opening date and time with the City Clerk.
6. After publicly opening the bids, the City Clerk shall make a copy of the bids for the responsible department head. The original bid documents will remain in the Office of the City Clerk.
7. The responsible department head shall prepare and submit an analytical report to the City Manager on the bids received which will conclude with an award recommendation.

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| Subject: Purchasing Practices and Approval Requirements Policy | | Policy No. B-23. |
| Reference: | Effective: 08/14/01 | Page No. 1 of 19 |

PURPOSE

The purpose of this policy is to provide the City of Banning a means of assuring continuity and uniformity in its purchasing operation, and to define the responsibilities for purchasing supplies, services, tools and equipment, and installation for the City of Banning. These guidelines are not intended to address every issue, exception, or contingency that may arise in the course of purchasing activities. The basic standard that should always prevail is to exercise good judgment in the use and stewardship of City resources, including keeping within the budget authorized by the City Council, and to be certain of quantity, quality, cost, delivery date, warranty and liability coverage before accepting the purchase.

In accordance with the policy framework set forth in Chapter 18A of the Banning Ordinance Code, City purchases and contracts will be made pursuant to these guidelines. Applicable competitive bidding categories, authorization limits, or contract award procedures will be based on unit cost, total purchase cost for consolidated bid items, or fiscal year aggregates in the case of blanket purchase orders or similar ongoing purchasing arrangements. Staging of purchases in order to avoid these competitive bidding procedures or authorization limits is prohibited.

Whereas the City of Banning also administers the purchasing function for the Electric Operations, the process shall vary for energy agreements as specifically provided for in the Banning Ordinance Code Section 2-17.1.

PROCUREMENT CATEGORIES

A. Service

Purchase of Labor that is not supervised by a City employee and that does not result in modification to City property or private property under the authority of the City, and not for the purpose of obtaining an intellectual product.

B. Consulting Services

Purchase of Service for the purpose of obtaining an intellectual product, e.g. asbestos survey, audit reports, investigative reports, plan reviews, photos, advice, training, parking ticket processing.

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C. Rental

The term purchase, as used herein, shall also include the rental or lease of tools and equipment.

D. Installation

Purchase of service in combination with the purchase or rental of tools and equipment, or materials or supplies or, purchase of Service that will result in modification to City property or private property under the authority of the City.

E. Equipment

Tangible property with a life in excess of one year

F. Supplies

Tangible property with a life of one year or less

UNAUTHORIZED PURCHASES

Except for emergencies (B.O.C. §18A-7(5)), petty cash purchases, purchases of \$1,000 or less authorized by a Department Head or other authorized exemptions, no purchase of supplies, services, tools and equipment, or installations shall be made without an authorized purchase order. In addition, the person ordering supplies, services, tools and equipment, or installations shall be authorized to purchase per Responsibilities of Departments, Paragraph A (found on page 4 of this Policy). Otherwise:

- A. Such purchases are void and are not an obligation of the City.
- B. Invoices without an authorized purchase order may be returned to the vendor unpaid at the discretion of the Finance Director, or his or her designee, and the purchasing authority of the party making the purchase may thereafter be limited.
- C. The person ordering the unauthorized purchase may be held personally liable for the costs of the purchase or contract.

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Purchase orders shall be issued prior to ordering supplies, tools and equipment, services and installations, and not "after the fact" for work already done or materials already ordered.

RESPONSIBILITIES OF THE FINANCE DIRECTOR/PURCHASING

The Finance Director is responsible for 1) the procurement of general supplies, services and equipment; 2) the administration of the purchasing policy; and 3) the management of surplus City property. To perform these functions efficiently and assist departments, the Finance Director shall:

- A. Be charged with the responsibility and authority for coordinating and managing the procurement of the City's general supplies, services and equipment from the lowest responsive, responsible and qualified bidder when required by this policy.
- B. Ensure full and open competition on all purchases as required by this policy.
- C. Identify, evaluate and utilize purchasing methods that best meet the needs of the City (i.e., cooperative purchases, blanket purchase orders, contractual agreements, etc.).
- D. Assist all departments with research and recommendations in developing specifications and review specifications for completeness of information to ensure specifications are not unnecessarily restrictive.
- E. Review all non-public works bid proposals prior to issuance.
- F. Coordinate vendor relations, locate sources of supply, and evaluate vendor performance.
- G. Recommend revisions to purchasing procedures when necessary and keep informed of current developments in the field of public purchasing.
- H. Prescribe and maintain all forms and records necessary for the efficient operation of the purchasing function.
- I. Act as the City's agent in the transfer and disposal of surplus equipment and materials.

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- J.** Make purchase award recommendations to the appropriate authority.
- K.** Be authorized to allow a budget over-ride for purposes of timely completion of a purchase transaction as long as such action would not put the fund over-budget when reasonably projected to the end of the fiscal year.

RESPONSIBILITIES OF DEPARTMENTS

Departments are charged with the following responsibilities in the purchasing process:

- A.** To provide to the Finance Director, at the beginning of each fiscal year, an updated authorized signature list designating those individuals who are delegated the authority to make purchases per the policies and procedures as described herein.
- B.** To anticipate requirements sufficiently in advance to allow adequate time to obtain goods in accordance with the best purchasing practices.
- C.** To communicate and coordinate purchases with Purchasing, as necessary.
- D.** To provide detailed accurate specifications to ensure goods obtained are consistent with requirements and expectations.
- E.** To prepare requisitions in accordance with instructions so as to minimize the processing effort.
- F.** To inform Purchasing of any vendor relations' problems, shipping problems (i.e., damaged goods, late delivery, wrong items delivered, incorrect quantity delivered, etc.) and any situations that could affect the purchasing function.
- G.** To minimize urgent and sole source purchases and to provide written documentation when such purchases may be necessary.
- H.** To assist Purchasing with the review of all bids received for compliance with specifications, and provide Purchasing with written documentation regarding their findings.

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- I. To notify vendors of purchase award when authorized by the Finance Director.
- J. To not "split" orders for the purpose of avoiding procurement requirements.
- K. To obtain vendor quotes when appropriate.
- L. To prepare request for bids and request for proposals packages and be responsible for mailing or contacting vendors. All sealed bids should be delivered to the City Clerk's office and bid openings should be scheduled with appropriate departmental personnel, Purchasing and City Clerk, whenever possible.
- M. To forward all formal bid proposals to Human Resources/Risk Management for review and approval in regards to insurance requirements, prior to final Purchasing review.
- N. To forward all formal bid proposals to Purchasing for review and approval prior to issuance.
- O. To provide on all new vendors a completed vendor packet to include name, physical address, mailing address, telephone number and federal identification number or social security number when required.
- P. To maintain proper records in the Department of bids, quotes and signed requisitions authorizing purchases, for a period of not less than 2 years. During the course of a contract the responsible department will maintain records. At the conclusion of the contract, the original bids, specifications, and other pertinent data will be forwarded, along with the request for final payment to purchasing.
- Q. To ensure that requests that will put an account over-budget will be accompanied by a Request for Transfer of Funds so the proposed account will have sufficient funds for the purchase.

VENDOR RELATIONS

It is to the City's advantage to promote and maintain good relations with vendors. Purchasing and operating department staff shall conduct their dealings with vendors in a

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professional manner and shall promote equal opportunity and demonstrate fairness, integrity, and courtesy in all vendor relations. When feasible to do so, vendors within the City of Banning should be utilized for supplies, services and equipment.

PURCHASING AUTHORITY AND METHODS

Purchases and contracts for supplies, tools and equipment, services, installations and will be made pursuant to the following guidelines.

- A. **Limited Purchase** For purchases of \$1,000 or less, the authority to award is the Department Head.
 1. All departments are hereby authorized to purchase supplies, material and tools and equipment, and services of \$1,000 or less without obtaining quotes from additional vendors.
 2. Comparative pricing is required to the extent possible by telephone or by use of the Internet. Pricing shall include considerations of delivery time, cost of delivery, discounts, warranties, return policy, cost of return, and the need for servicing of the purchase.
 3. The "Limited Purchase Approval" form, Exhibit "A", will serve as a model, should the Department Head desire to maintain records of purchases of tools and equipment, or supplies, or installation that he or she has approved under Section A-1 above.
 4. The Standard Agreement for Consultant Services for services, including consultant services, shall be substantially in the form attached hereto as Exhibit "B."

- B. **Open Market** For purchases of 1,001 - \$10,000 the Finance Director has the authority to award. For purchases of \$10,001 - \$25,000 the City Manager's approval is also required. Department staff shall not authorize purchases over \$1,000 without the approval of the Finance Director, or City Manager, except in the event of an emergency purchase (see page 14, Exception to Standard Purchasing Procedures). All departments shall use the Informal Bid process described in this Policy. The department shall submit electronically a requisition, which includes the recommended vendor, and price quotes obtained and shall maintain records of all supporting documentation. Supporting documentation shall include

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competitive price quotes obtained, names of vendors contacted, description of the items required, and certificates of insurance as applicable. Purchasing shall review the requisition and electronic documentation and may request to review supporting documentation kept within the department, as necessary, and may contact additional sources for quotations.

The Finance Director or designee may award purchase to the lowest responsive, responsible and qualified bidder whose quote fulfills the intended purpose, quality, and delivery needs of the solicitation, provided that an unencumbered appropriation for that item exists. In lieu of awarding the purchase, the Finance Director or designee may reject bids, or may negotiate further to obtain terms more acceptable to the City.

C. Formal Bid Proposals Purchases in excess of \$25,000 will be made pursuant to the formal bidding requirements described herein. Authority to approve specifications, invite bids or request proposals, and award contracts will be as follows:

1. For purchases with an approved line item budget and a cost estimate between \$25,000 and \$35,000, the City Manager, or designee, is authorized to invite bids or request proposals, and approve specifications. The City Manager shall award the contract.
2. For purchases with an approved line item budget in excess of \$35,000, the City Manager, or designee, is authorized to invite bids or request proposals, and approve specifications. Council award of the contract is required.
3. For purchases without an approved line item budget, in excess of \$25,000, Council award of the contract is required.

D. Blanket Purchase Orders A Blanket Purchase Order is an agreement whereby the City contracts with a vendor to provide service, tools and equipment or supplies on a just-in-time basis. Blanket Purchase Orders provide a mechanism whereby items that are uneconomical to stock may be purchased in a manner that allows field operations timely access to necessary materials. Blanket Purchase Orders shall not be used to purchase capital assets or items maintained in stock or items that can be reasonably maintained in stock as determined by the Finance Director or

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Department Head. The procedure is not for purposes of emergency purchases except as is consistent with the emergency purchase procedures set forth herein.

The Purchasing Division shall request confirmation of Blanket Purchase Orders annually, before the beginning of the fiscal year. Requests for Blanket Purchase Orders may also be submitted to the Purchasing Division on an as-needed basis. The Purchasing Division shall review Blanket Purchase Order requests based upon the following criteria:

1. Price, including cost of pick-up or delivery, and discounts
2. Reasonableness of stocking the items or of otherwise procuring the purchase through routine procedures, including:
 - a. Average dollar value and type of items to be purchased
 - b. Frequency of need
 - c. Time for delivery

All Blanket Orders shall include the following items:

- a. Documentation of all terms and conditions of the purchase including:
 1. A clear description of the tools and equipment, supplies or services that may be charged.
 2. The price, including discounts, and the price change policy
 3. Written confirmation of the vendor's agreement to all such terms and conditions
- b. The expiration date of the order, which will be no later than the end of the current fiscal year.
- c. The maximum amount that may be charged on the purchase order.
- d. Items excluded from purchase, if applicable.
- e. Identification of the department(s) and employee(s) who may charge against the order. Number shall be limited to one person except upon the approval of the Finance Director or his or her designee.
- f. Requirement that the employee show official identification issued by the City.
- g. Requirement that employees print and sign their names when picking up goods.
- h. Requirement that employees return any receipts (or other paperwork) received from vendor to Department for processing.

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- i. Requirement that the vendor bill the City using City identification of purchaser.
- j. There shall not be more than one purchase order open with a vendor except on the express written approval of the Finance Director or his or her designee.
- k. Once a Blanket Purchase Order is issued to a vendor, any authorized City employee may contact the vendor directly to place orders per the terms and conditions specified in the Blanket Purchase Order.

Department shall maintain an inventory of items purchased, and a determination of associated personnel costs including time lost on the job and costs of pick-up, for purposes of determining next years purchasing needs.

Open Purchase Orders shall require the same approval as required for any other purchase agreement of equivalent cost.

INFORMAL AND FORMAL BID PROCESS

Except as otherwise exempted in the policy, supplies, services, tools and equipment, and installations with an estimated value of \$1,001 to \$25,000 shall be purchased following an Informal Bid Process and purchases of \$25,001 or more shall be made following a Formal Bid Process.

To initiate the informal/formal bid process, the department making the request shall provide specifications for the item to be purchased and documentation showing the existence of an unencumbered appropriation for the item in the current approved budget. The purchasing division or requesting department shall solicit informal/formal bids as prescribed by this policy.

Informal bids may be posted at City Hall, posted on the City's Web-site, faxed, E-mailed, mailed or solicited over the phone to prospective bidders. Formal bids shall be posted at City Hall and shall be published at least once in a newspaper of general circulation as required by State law, and, if applicable, in appropriate trade publications and on the City's Web site. The date of publication shall be at least 10 days before the due date. All formal bids shall be sealed and shall be publicly opened and read at the date, time, and place indicated in the published notice.

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Bids shall be reviewed for compliance with specifications by the requesting department. All deviations from the specifications shall be fully documented by the requesting department and the impact of the deviations on the performance or suitability of the bid item shall be detailed. Staff will prepare and forward a recommendation for approval of purchase. The City Manager and/or City Council shall approve formal bids where applicable.

SPECIFICATIONS

It is the responsibility of each department to provide detailed, accurate specifications when requisitioning supplies, equipment and services. Accurate specifications are essential for effective bidding.

- A. **Sole Source Specifications** Sole source specifications shall be avoided whenever possible, as they minimize or eliminate competition. The appropriate authority (Finance Director, City Manager or City Council) may waive bidding requirements if sufficient written justification for a sole source purchase exists (B.O.C. §18A-8(1)). An example of sole source is where specific equipment or supplies are required in order to be compatible with existing equipment or to perform a complex or unique function. Written documentation signed by the appropriate Department Head shall accompany the requisition for any sole source request. Standard approval procedures and documentation will be adhered to.
- B. **Standardization** Standardization of specifications for items common to several divisions and/or departments can facilitate the purchasing process. Purchasing and departments shall work together to establish standard specifications for such items.
- C. **Brand Name, or Equal, Specifications** In purchasing equipment or supplies needed to be compatible with existing equipment, or to perform complex or unique functions, the Finance Director may limit bidding to a specific product type or a brand name product.

Use of brand names in specifications shall be for the purpose of describing the standard of quality, performance, and characteristics the City desires and not be intended to limit or restrict competition. If a brand name is incorporated into a specification, a minimum of two acceptable brands shall be listed whenever possible and shall be followed by the statement "or approved equal" unless the sole source rule applies.

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Using specifications provided by a specific manufacturer should be avoided, however, if used, the name of the manufacturer, model number, etc., should be indicated. The bid document shall clearly state that the use of the manufacturer's specifications is for the sole purpose of establishing the characteristics and quality desired. The Finance Director reserves the right to determine and approve any product submitted as an "or equal."

- D. Vendor Assistance in Writing Specifications** There may be occasions when vendor assistance is required to develop a specification. Such specifications shall be written in general terms and the vendor shall be informed that the information they provide may be used to develop specifications for a competitive bid process. The vendor shall be allowed to submit a bid, but will not be given any preference over the other bids.

PURCHASE AWARD

A. Lowest Responsive, Responsible and Qualified Bidder

1. Bids shall be awarded to the "responsive," "responsible" and "qualified" bidder who submits the lowest bid.
2. In determining the lowest "responsive" bid, the following elements shall be considered in addition to price:
 - a. A responsive bid is one that is in substantial conformance with the requirements of the invitation to bid, including specifications and the City's contractual terms and conditions. Bidders who substitute terms and conditions or who qualify their bids in such a manner as to nullify or limit their liability shall be considered non-responsive bidders.
 - b. Conformance with the requirements of the invitation to bid shall also include providing proof of insurance, proof of required State and/or City licenses, completing all forms, including references, and all other information as requested in the bid document.
 - c. The successful bidder must demonstrate the ability to successfully fulfill a contract, including rendering of subsequent and continuing service. Staff may request proof of

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a prospective bidder's reliability. Prospective bidders may be requested to furnish proof of financial resources, a list of current or previous customers, and other pertinent data. Such action may also be taken after receipt of bids.

- d. A bidder may be determined to be non-responsive if a prospective bidder fails to furnish proof of qualifications when required.
3. In determining the lowest "responsible" bidder, the following elements shall be considered in addition to price:
 - a. A responsible bidder is one that is financially responsible and possesses the resources, judgement, skills, ability, capacity, and integrity necessary to perform the contract according to its terms.
 4. In determining the lowest "qualified" bidder, the following elements shall be considered in addition to price:
 - a. That the products offered conform to the advertised specifications and otherwise provide the quality, fitness, and capacity for the required usage.
 - b. That the bidder has the ability, capacity and skill to perform the contract satisfactorily and within the time required.
 - c. That the bidder's experience(s) regarding past purchases by the City or other public agencies demonstrates the reliability of the bidder to perform the contract.
 5. When a bid is recommended to be awarded to other than the low bidder, written justification is required. The written statement, signed by the appropriate Department Head, shall be forwarded to Purchasing at the time the purchase requisition is entered into the system.
- B. Rejection of Bids** The Finance Director or the requesting Department Head may recommend rejection of any or all bids if it is determined to be in the best interests of the City. Reasons for rejection may include, but are

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not limited to, the following: a bid is determined to be non-responsive, the number of bids received is inadequate, bids received are not reasonably uniform in price, or the lowest bid received is deemed to be too high. The Finance Director, City Manager or City Council may, in any given case depending on bid amount, reject all bids with or without cause and submit the supplies, tools and equipment, service or installation involved to a new bidding process. If all bids are rejected, Purchasing may be authorized to re-solicit bids, negotiate a contract for the purchase, or abandon the purchase.

C. Tie Bids If two or more bids are received which are in all respects equal, the Finance Director may accept the one deemed in the exercise of his or her sole discretion to be in the best interests of the City.

D. Local Vendor Purchasing Preference Local preference is the practice of procurement from certain suppliers/contractors because they are also local taxpayers. Local preference is desirable because it stimulates the local economy. All orders/contracts are awarded on the basis of quality, previous performance, ability to meet the contract requirements, availability of service and parts, delivery schedule, and payment terms/discounts and all of the factors particular to the award. When all these factors are equal except price, a preference will be given to local vendors equal to 2% of the quoted price (B.O.C. §18A-5).

E. Change Orders A Purchase Order represents a contract between the City and the Vendor. Any substantial change to a Purchase Order shall be documented as a change order. Change Orders shall be reviewed by the Purchasing Division and shall be approved by the Finance Director. A purchase order may not be increased by more than 10% or \$2,500, whichever is less, without a change order, except for taxes, shipping and handling as discussed below.

Taxes, shipping and handling may cause the purchase order to exceed the authorized purchase order amount. These items do not require a Change Order, even if they exceed 10% of the original purchase order amount.

The Requisition Form shall be used to change a quantity, description, size, color, vendor name or address, unit price, delivery location, terms and conditions and to delete or add to the order. It shall also be used to

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terminate a purchase order and to correct errors in the original purchase order.

EXCEPTIONS TO STANDARD PURCHASING PROCEDURES

A. Emergency Purchase

1. **Tools and Equipment or Service Failure** An emergency is defined under B.O.C. §18-A (8)(5)(c) as a breakdown in machinery or service that requires an immediate purchase to protect the public health or safety, or to avoid interruption of essential City operations. Under such conditions the City Manager may authorize the Finance Director or his/her designee to secure in the open market, at the lowest obtainable price, any supplies, materials, equipment, or contractual services required, as necessary to eliminate the emergency condition as determined by the City Manager in his or her sole and reasonable discretion.

2. **Disaster Operations** During an emergency condition as defined in B.O.C. §18A-8(5) (a) or (b), the using division may purchase any supplies, materials, equipment, or contractual services. This may be done only after the division manager has concluded that the purchase is essential to prevent delays, which may affect the life, health, or safety of citizens. The head of the using division shall, within 2 days, provide a completed purchase requisition to the Finance Director or his/her designee, as well as a full written explanation of the circumstances.

In the case of a disaster or for civil defense, nothing contained in this document shall limit the authority of the director of emergency services and/or the City Manager to make purchases and take such other emergency steps as are, or may be, authorized by the City Council.

- B. Used Equipment** Competitive bidding shall be used whenever multiple sources of comparable equipment are discovered and the City enjoys no significant price advantage from any one vendor. Before making the purchase, the department shall determine a range of fair market value for the item to be purchased without bid. In determining the fair market value, each department shall document the methods used to make such

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determination including tools such as Kelly Blue Book, classified advertisements, and local vendors with similar products available. The City Manager is authorized to approve the purchase of used equipment up to \$25,000 after a review of all supporting documentation. Council approval is required for purchases that exceed \$25,000.

C. Cooperative Purchasing (B.O.C. §18A-8(C)) The Finance Director or his/her designee has the authority to participate in purchases and contracts established by other public entities in cooperative purchasing agreements, provided the cooperative agreement is established following a competitive bid process, even if the City has not joined with that public agency in a formal agreement. The Finance Director or his/her designee may also purchase from the United States of America or any state, municipality or other public corporation or agency without following formal purchasing procedures as defined in this document.

D. Petty Cash (replaces Policy B-2) The high cost of payment processing makes it imperative that small-dollar purchases are made by cash. The exception is when the City heavily patronizes the vendor and the vendor is willing to establish a purchase order with the City. Each division that has a petty cash fund may use it only for minor purchases of up to \$25 when buying from uncommon sources, or vendors that have stated that they are unwilling to establish a purchase order with the City but because of the proximity and type of goods, the City continues to require purchases.

The Department Head shall be accountable for the safekeeping of funds within their divisions. The following steps shall be taken to insure the security of funds and the propriety of reimbursement of expenditures:

1. Petty cash custodians shall be appointed by the Department Head and must record all expenditures in pre-numbered petty cash receipt books, which are obtained from the Finance Department.
2. Actual receipts shall be attached to the white copies of the pre-numbered receipts when requesting petty cash fund reimbursement.
3. Completed receipt books are to be turned in to the Finance Division to receive an additional receipt book.
4. Each division must submit their petty cash expenditures for reimbursement monthly.

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5. No expenditure will be reimbursed without support of an invoice, receipt or similar documentation.

The Finance Director shall have the final authority to establish or terminate petty cash funds and establish such funds' dollar size. Finance will periodically audit, without notice, each division's petty cash fund.

E. Public Works Projects All public works contracts over \$5,000 must be approved by City Council. This includes all procurement involving the purchase of supplies, services and equipment that is included within the specification of a "Public Works Contract" and is subject to the regulations contained in the State of California Public Contract Code.

F. Exemptions Certain purchases that are not readily adaptable to the open market and the bid process, or purchases that require a check to accompany the order are exempt from the bid/purchase order process. The direct pay method may be used to process payments for exempt items, regardless of the amount. Following is a list of allowable exemptions:

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| Advertisements and Notices | Payment to Other Governmental Units |
| Attorney & Consultant Services | Petty Cash Replenishment |
| City Debt Service | Property Rental |
| Conference registration | Postage/Delivery/Messenger Svs |
| Dept. Purchases \$1,000 or less | Real property/Easement Acquisition |
| Educational seminars, training | Refunds |
| Fuel | Subscriptions/Membership Dues |
| Insurance Claims and Premiums | Trade circulars, Books or CD's |
| Loans | Travel Expense/Advances |
| Medical Payments | Utility Payments |

Exemptions are limited to those items listed above. Departments may submit written requests for additional exemptions to the Finance Director. If warranted, additional exemptions will be added to this list.

PROFESSIONAL /CONSULTANT SERVICES

All employment of consultants shall be evidenced by a signed contract with the City. Said contract shall be signed by all parties prior to the commencement of work. Said contract shall, at a minimum, contain the language contained in Attachment B. Contracts for consultant services will be awarded pursuant to the following guidelines:

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- A. Contracts for consultant services estimated to cost \$5,000 or less may be awarded by the Department Head.
- B. Contracts for consulting services estimated to cost between \$5,001 and \$25,000 may be awarded by the City Manager. Proposals from at least three firms should be solicited whenever practical.
- C. Contracts for consultant services estimated to cost more than \$25,000 will generally be awarded pursuant to the following guidelines; however, it is recognized that the City's need for consultant services will vary from situation to situation, and accordingly, flexibility will be provided in determining the appropriate evaluation and selection process to be used in each specific circumstance.
 - 1. The City Manager should generally approve request for proposal (RFP) or request for qualification (RFQ) documents before they are issued. The Council may authorize the City Manager to award the contract if it is less than or equal to the Council-approved budgeted cost estimate and there are no substantive changes to the approved work scope. Otherwise, Council award of the contract is required.
 - 2. Cost will not be the sole criteria in selecting the successful bidder. Consultant proposals will be evaluated based on a combination of factors that result in the best value to the City, including but not limited to:
 - a. Understanding of the work required by the City
 - b. Quality and responsiveness of the proposal
 - c. Demonstrated competence and professional qualifications necessary for satisfactory performance of the work required by the City
 - d. Recent experience in successfully performing similar services
 - e. Proposed methodology for completing the work

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- f. References
 - g. Background and related experience of the specific individuals to be assigned to the project
 - h. Proposed compensation
3. In the event that it is determined that it is in the best interests of the City for services to be provided by a specific consultant - with contract terms, work scope, and compensation to be determined based on direct negotiations - contract award will be made by the City Manager.

DEFINITIONS AND SPECIAL REQUIREMENTS

Quote

Verbal or written promise from the vendor/contractor guaranteeing the cost of specific goods, supplies, or services.

Bid

Written offer, more formal than a quote, to furnish supplies, equipment, vehicles, services in conformity with the specifications, delivery terms, and conditions required at a guaranteed maximum cost.

Capital Asset

A tangible asset, that will last for more than one year, that is being capitalized per the requirements of the Fixed Assets Policy (C-8).

Commercial General Liability (CGL) Insurance

All contractors engaged in service on City property are required to maintain minimum liability insurance of \$1,000,000 for each occurrence naming the City of Banning as an additional insured. Certain high-risk activities require higher limits.

Auto Liability Insurance

All contractors engaged in service on City property are required to maintain minimum automobile liability insurance of \$1,000,000 for each occurrence naming the City of Banning as an additional insured. Certain high-risk activities require higher limits.

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Worker's Compensation Insurance

All contractors engaged in service on behalf of the City are required to maintain Worker's Compensation Insurance in accordance with the provisions of the State of California, including a waiver of subrogation rights against the City.

Prevailing Wage

Payment of prevailing wages established by City Council shall be required on all publicly funded public works contracts of \$5,000 or more. When a contract requires this, notification will be included in the call to bid.

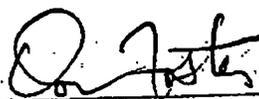
Professional Services

Any work performed by, but not limited to, an auditor, attorney, doctor, architect, engineer, land surveyor, construction project manager, appraiser, expert, or consultant. Provision of such services requires professional liability insurance in an amount of \$1,000,000 for each occurrence, except as specifically provided in individual contracts.

Public Works Project

Specific, planned undertaking for the creation, improvement and/or repair of buildings and works, including parks; for the construction and installation of streets and sewers; or for the general benefit of the citizenry (e.g., street lights, drains, etc.).

Approved: _____



Don Foster, City Manager

LIMITED PURCHASE APPROVAL

Banning Ordinance Code Section 18A-4 grants to department heads the authority to approve purchases of supplies, materials, tools and equipment and installations with a value not to exceed one thousand dollars (\$1,000). Pursuant to that authority, the following described purchase is approved.

I. Solicitation:

a. Department: _____

b. Date: _____

c. Clear and complete description of the item to be purchased, including any specifications as to quality and quantity.

d. Term _____ (shall not exceed 90 days)

e. Specification of required date, time and manner of delivery:

- Title to tools, equipment, supplies only; and risk of loss to tools, equipment, and supplies; and licenses and all other materials shall pass to City upon delivery to the City, providing same is accepted as in good order.
- City shall notify seller promptly of any claim with respect to loss which occurs while the seller has the risk of loss, and shall cooperate in every reasonable way to facilitate the settlement of any claim.
- For purposes of this paragraph, "delivery" shall mean the point at which the seller or seller's supplier or agent turns over possession of the tools and equipment and supplies to City, City's employee, City's designated carrier, City's warehouse or storage facility, or other City agent. Delivery is not synonymous with "acceptance."

f. Conditions of acceptance by the City:

g. Name, address, and telephone number of vendors contacted and name of vendors representative, and vendor number (obtained from Finance Department):

II. Acceptance:

a. Identification of selected vendor and written verification of vendor's agreement to perform (may be attached).

b. Written specifications of items promised by vendor in response to solicitation if different from (c) above:

c. Terms of vendor acceptance, including price, cost of delivery, discounts, return policy, and cost of return. In the absence of a specification by the vendor, the City's standard discount requirement is 2/15 (two percent reduction in price if paid within 15 days). The department shall be liable for all discounts.

d. Warranties provided by vendor (may be attached);

If the vendor does not provide a warranty, the following shall apply:

1. Seller warrants to City that during the applicable warranty period, which shall in no event be less than (90) days from the date of delivery.

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- (i) Seller's manufactured products (i.e. any product manufactured by Seller and purchased by City under this agreement) will be free from defects in material and workmanship and will conform to Seller's specifications for such products;
 - (ii) Licensed materials (i.e. software or any other product for which licenses are granted by Seller under this agreement) developed by Seller will be free from those defects which materially affect function or performance in accordance with Seller's specifications; and
 - (iii) Services will be performed in a workmanlike manner and in accordance with good usage and accepted practices in the community in which services are provided. With respect to products, licensed materials or assembly of products furnished by Seller, but neither manufactured by Seller nor purchased by Seller pursuant to this procurement specifications; Seller, to the extent permitted, does hereby assign to City the warranties given to Seller by its vendor(s) of such items.
2. If, under normal and proper use, a defect or non-conformity appears in Seller's manufactured products or licensed materials during the applicable warranty period;
- (i) City shall notify Seller in writing of such defect or non-conformance within 5 working days of actual knowledge of such defect or non-conformance, and
 - (ii) City shall follow Seller's instructions regarding return of defective or non-conforming product or licensed materials,
 - (iii) Seller, at City's option, shall within fourteen (14) calendar days, or less if the defective item is necessary for performance of a critical function as determined by the City, either repair, replace or correct the same without charge at its manufacturing or repair facility or provide a full refund or credit based on the original purchase price or license fee.
3. If engineering or installation services prove not to be performed as warranted within a three (3) month period commencing on the date of completion of the services, Seller, at the City's option, either will correct the defect or non-conforming services or render a full refund or credit based on the original charges for the services. Seller shall pay all costs and expenses associated with
- (i) removal and reinstallation of the product or licensed materials,
 - (ii) transportation expenses associated with returning such product or licensed materials to Seller, and
 - (iii) transportation of the repaired or replaced product or licensed materials to the City.
4. With respect to Seller's manufactured products that City has ascertained are not readily returnable for repair, Seller, at City's option, may elect to have the manufactured products repaired or replaced at City's site and the Seller shall pay all costs and expenses associated therewith, including but not limited to restoring the site after completion of the repairs or replacement.

III. Insurance Terms Applicable to Service and Installation Contracts:

Seller shall provide and maintain at its own expense during the term of this Agreement the following program(s) of insurance covering its operation hereunder. Such insurance shall be provided by insurer(s) satisfactory to City and evidence of such programs satisfactory to City shall be delivered to the City Manager or his or her designee within ten (10) days of the effective date of this Agreement.

General Liability: A program including, but not limited to, comprehensive general liability including automobile coverage with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall be primary to and not contributing with any other insurance maintained by the City of Banning, and shall name the City of Banning as an additional insured.

Workers' Compensation: A program including workers' compensation insurance, where necessary, with statutory limits and a waiver of subrogation rights against the City of Banning.

Failure on the part of Seller to procure or maintain required insurance shall constitute a material breach of this Agreement upon which City may immediately terminate this Agreement.

IV. Insurance Terms Applicable to Consulting Service Contract (service procured for the purpose of obtaining an intellectual product on which the City will rely in construction or modification of City property or on which it will rely in making a binding representation to a government entity or other third party)

Professional Liability Insurance: Consultant shall maintain Professional Liability Insurance providing coverage for Contractor's performance of work included in this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and Consultant shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; 3) demonstrate through Certificates of Insurance that Consultant has maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue for a period of 3 years beyond the termination of this Agreement.

V. _____ (check when applicable) **NO INSURANCE REQUIRED.**

- a. No insurance is required when the product provided under the contract is materials, supplies, tools and equipment held out by the Seller for purchase by the general public in its normal course of business, for the purpose and with the quality agreed upon by the City; the item is delivered ready to use; and, no installation services are required to be provided by the vendor or any third party.
- b. No insurance is required when the product provided under the consulting service contract is advice and information intended exclusively for use by the department head; e.g. review of documents, situational analysis, strategy consultation, interpretation of legislation. Also, at the time of contracting, it is contemplated that any such advice that is of a technical nature will be subject to further development before the City takes action in reliance thereon.

VI. This agreement shall supercede any inconsistent provision of any agreement respecting this same transaction.

VII. Disputes arising under this agreement shall be resolved by appeal to the Banning City Council whose determination shall be final and binding.

Signature:

(Department Head)

(Vendor)

**STANDARD AGREEMENT FOR
CONSULTANT SERVICES
THE CITY OF BANNING**

THIS AGREEMENT, made and entered into this ___ day of July, 2001, by and between the City of Banning ("City") and ("Consultant" or, "Seller") (sometimes jointly referred to herein as the "Parties").

RECITAL

1. **Purpose**

The purpose of this Agreement is to allow City to procure the service of an experienced professional individual or firm to perform the services described in Attachment 1 hereto.

TERMS AND CONDITIONS

2. **Mission**

City hereby retains Consultant in the capacity as Consultant for provisions of services described in Attachments I. Consultant hereby accepts such responsibility as described herein. In the event of any conflict between the interpretation of the terms and conditions of this Agreement and any provision contained in Attachment I, herein, the language of this agreement shall prevail. The Consultant shall require that all applicable provisions of this Agreement be made a part of any contract with a subcontractor for performance hereunder. Special attention is addressed to the insurance requirements.

3. **Terms**

This Agreement shall commence as of the day and year first above shown and shall remain in full force and effect for a period of ninety (90) days, unless sooner terminated as provided herein. The City Manager ("City Manager"), or his or her designee, is authorized to approve line item adjustments to the Agreement's program budget as long as either of such amendments are upon the same terms and conditions as specified herein, and do not increase the total compensation agreed upon herein.

4. **Consultant Responsibilities**

Upon the request of the City Manager, or his or her designee, Consultant shall complete the work program described in Attachments I. Consultant commits the principal personnel listed below to the project for its duration:

Consultant

5. **Replacement of Named Personnel**

It has been determined that the individual(s) named in this Agreement are necessary for the successful performance of this Agreement. No diversion or replacement of these individuals(s) shall be made by Consultant without written consent of City, who may ratify, in writing, within ten (10) days of diversion or replacement and such ratification shall constitute the consent of City required by this clause. If City fails to respond to Consultant within ten (10) days of notification by Consultant; said personnel diversion or replacement shall be deemed approved.

6. **Release of News Information**

No news release, including photographs, public announcements or confirmation of same, of any part of the subject matter of this Agreement or any phase of any program hereunder shall be made without prior written approval of City or his or her designee.

7. **Confidentiality of Reports**

Consultant shall keep confidential all reports, information and data received, prepared or assembled pursuant to performance hereunder and that City designates as confidential. Such information shall not be made available to any person, firm, corporation or entity without the prior written consent of City.

8. **Compensation**

During the term of this Agreement, City shall pay Consultant, for each work component the fixed, not to exceed, fee described in Attachments I. Said compensation shall be considered full and complete reimbursement for all of Consultant's costs associated with the services provided hereunder. The maximum compensation for services, including all Consultant's costs, under the terms of this Agreement, shall not exceed _____.

Consultant shall be paid in accordance with City's standard accounts payable system. The City Manager, or his or her designee, shall approve invoices.

9. **Right to Audit**

City, or any of its duly authorized representatives, shall have access to any books, documents, papers and records of Consultant and/or its subcontractors which are pertinent to the specific program hereunder for the purpose of making an audit, an examination, excerpts and transcriptions. All books, records and supporting detail shall be retained for a period of one (1) year after the expiration of the term of this Agreement, or any extension thereof, City may request in writing, at least thirty (30) days prior to expiration of this Agreement that information and records prepared, or used by Consultant in providing the services under this Agreement be provided to City whereupon Consultant shall provide said information to City within thirty (30) days.

10. **Audit Exceptions**

Consultant agrees that in the event the program established hereunder is subjected to audit exceptions by appropriate audit agencies, it shall be responsible for complying with such exceptions and paying City the full amount of liability resulting from such audit exceptions.

11. **City Support**

City shall provide Consultant with any plans, publications, reports, statistics, records or other data or information pertinent to the services to be provided hereunder which are reasonably available to City.

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12. Independent Contractor

Consultant shall perform the services as contained herein as an independent contractor and shall not be considered an employee of City or under City supervision or control. This Agreement is by and between Consultant and City, and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, between City and Consultant.

13. Work Product

All work product produced under this contract will be considered work made for hire, and shall become the sole property of the City of Banning.

14. Conflict of Interest

Consultant represents, warrants and agrees that it does not presently have, nor will it acquire during the term of this Agreement, any interest direct or indirect, by contract, employment or otherwise, or as a partner, joint venturer or shareholder (other than as a shareholder holding a one percent (1%) or less interest in publicly traded companies) or affiliate with any business or business entity that has entered into any contract, subcontract or arrangement with the City of Banning. Upon execution of this Agreement and during its term, as appropriate, Consultant shall upon written request, disclose in writing to City any other contractual or employment arrangement from which it receives compensation. Consultant agrees not to accept any employment during the term of this Agreement by any other person, business or corporation which employment will or may likely develop a conflict of interest between the City of Banning's interests and the interests of third parties.

14. Successor and Assignment

The services as contained herein are to be rendered by Consultant whose name is as appears first above written and said Consultant shall not assign nor transfer any interest in this Agreement without the prior written consent of City.

15. Indemnification

Consultant agrees to indemnify, defend (upon request by City) and save and hold harmless the City of Banning, its agents, officers and employees, from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage arising from or connected with Consultant's operations, or its services hereunder, including any workers' compensation suit, liability or expense, arising from or connected with the services performed by or on behalf of Consultant by any person pursuant to this Agreement, save actions arising from City's active negligence in performing its duties hereunder.

16. Insurance

Without limiting Consultant's indemnification of City, Consultant shall provide and maintain at its own expense during the term of this Agreement the following program(s) of insurance covering its operation hereunder. Such insurance shall be provided by insurer(s) satisfactory to City and evidence of such programs satisfactory to City shall be delivered to the City Manager or his/her designee within ten (10) days of the effective date of this Agreement.

Minimum Scope of Insurance:

Commercial General Liability and Umbrella Liability Insurance on an occurrence basis, including the tort liability of another assumed in a business contract. Automobile and Umbrella Liability Insurance for any auto, including owned, hired and non-owned autos.

Worker's Compensation Insurance as required by the State of California and Employer's Legal Liability, including a waiver of subrogation against the City of Banning. Professional Liability coverage on either a claims made or occurrence basis.

Minimum Limits of Insurance:

General Liability/Umbrella Liability with a limit of not less than \$1,000,000.00 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the contract project. Automobile Liability (and necessary commercial umbrella liability) Insurance with a limit of not less than \$1,000,000.00 each accident. Worker's Compensation (commercial umbrella and/or employers liability) Insurance with a limit of not less than \$1,000,000.00 each accident for bodily injury by accident or \$1,000,000.00 each employee for bodily injury by disease. Professional Liability with a limit of not less than \$1,000,000 per occurrence.

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or (b) the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions:

Additional Insured Status of City. The City, its officers, officials, employees, and volunteers shall be insureds with respect to either liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Consultant or liability arising out of work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations, excepting professional liability coverage.

Insurance Primary to City Insurance. For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Prior Notice of Cancellation. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by Consultant or Consultant's insurance; except after thirty (30) days prior written notice to the City.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII.

17. VERIFICATION OF COVERAGE:

Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

Failure on the part of Consultant to procure or maintain required insurance shall constitute a material breach of this

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Agreement upon which City may immediately terminate this Agreement.

18. Insurance Terms Applicable to Consulting Service Contract (service procured for the purpose of obtaining an intellectual product on which the City will rely in construction or modification of City property or on which it will rely in making a binding representation to a government entity or other third party)

Professional Liability Insurance: Consultant shall maintain Professional Liability Insurance providing coverage for Contractor's performance of work included in this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and Consultant shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; 3) demonstrate through Certificates of Insurance that Consultant has maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue for a period of 3 years beyond the termination of this Agreement.

____ (check when applicable) **NO INSURANCE REQUIRED.**

No insurance is required when the product provided under the consulting service contract is advice and information intended exclusively for use by the department head; e.g. review of documents, situational analysis, strategy consultation, interpretation of legislation. And, at the time of contracting, it is contemplated that any such advice and information that is of a technical nature will be subject to further development before the City takes action in reliance thereon.

19. Compliance with Laws

The parties agree to be bound by applicable federal, state and local laws, regulations and directives as they pertain to the performance of this Agreement.

20. Non-Discrimination

In the fulfillment of the program established under this Agreement, either as to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other terms of compensation, selection for training, including apprenticeship or participation in the program or the receiving of any benefits under the program, Consultant agrees not to discriminate nor to allow any subcontractor to discriminate on the basis of race, color, creed, religion, natural origin, ancestry, sex, marital status or physical handicap.

21. Severability

In the event that any provision herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other provision contained herein. If any such provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

22. Interpretation

No provision of this Agreement is to be interpreted for or against either party because that party or that party's legal representative drafted such provision, but this Agreement is to be construed as if it were drafted by both parties hereto.

23. Waiver

No breach of any provision hereof can be waived unless in writing, Waiver of any one breach of any provision shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

24. Contract Evaluation and Review

The ongoing assessment and monitoring of this Agreement is the responsibility of City Manager or his or her designee.

25. Termination

Either party may terminate this Agreement by giving written notice at least five (5) days prior to the effective date of the termination. Each party hereby assumes its risk of loss as a result of such termination and hereby waives any right against the other for costs of performance or for breach of performance hereunder. Said waiver is void and of no effect upon proof of bad faith on the part of the party initiating the termination. The County of Riverside shall be the venue for any legal action commenced hereunder.

26. Notice

Notices, herein shall be presented by regular, certified or registered U.S. mail, as follows:

To Consultant:

To City: City of Banning
 Post Office Box 998
 Banning, California 92220
 Attention: City Attorney

Nothing in this paragraph shall be construed to prevent the giving of notice by personal service.

27. Entire Agreement

This Agreement with attachments constitutes the entire understanding and agreement of the parties. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the retention of Consultant by the City and contains all the covenants and agreements with respect to such retention.

28. No Third Party Beneficiaries

No third party shall be deemed to have any rights hereunder against any of the parties hereto as a result of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above shown.

CITY OF BANNING

By _____
City Manager

By _____

Title _____

For _____

APPROVED AS TO FORM
AND LEGAL CONTENT:

By _____
John F. Wilson
City Attorney

APPROVED AS TO INSURANCE PROVISIONS:

By _____
F. Ann Yates, R.M. Division

PUBLIC CONTRACT CODE

SECTION 20160-20175.2

20160. The provisions of this article shall apply to contracts awarded by cities subject to Title 4 (commencing with Section 34000) of the Government Code.

20161. As used in this chapter, "public project" means:

(a) A project for the erection, improvement, painting, or repair of public buildings and works.

(b) Work in or about streams, bays, waterfronts, embankments, or other work for protection against overflow.

(c) Street or sewer work except maintenance or repair.

(d) Furnishing supplies or materials for any such project, including maintenance or repair of streets or sewers.

20162. When the expenditure required for a public project exceeds five thousand dollars (\$5,000), it shall be contracted for and let to the lowest responsible bidder after notice.

20163. It shall be unlawful to split or separate into smaller work orders or projects any public work project for the purpose of evading the provisions of this article requiring public work to be done by contract after competitive bidding. Every person who willfully violates this provision of this section is guilty of a misdemeanor.

20164. The notice inviting bids shall set a date for the opening of bids. The first publication or posting of the notice shall be at least 10 days before the date of opening the bids. Notice shall be published at least twice, not less than five days apart, in a newspaper of general circulation, printed and published in the city, or if there is none, it shall be posted in at least three public places in the city that have been designated by ordinance as the places for posting public notices. The notice shall distinctly state the project to be done.

20165. Any notice inviting bids, which specifies locations of possible materials, such as a borrow pit or gravel bed, for use in the proposed construction project which would be subject to Section 1602 of the Fish and Game Code, shall include any conditions or modifications established pursuant to Section 1603 of the Fish and Game Code.

20166. In its discretion, the legislative body may reject any bids presented and readvertise. If two or more bids are the same and the lowest, the legislative body may accept the one it chooses. If no bids are received, the legislative body may have the project done without further complying with this chapter.

20167. After rejecting bids, the legislative body may pass a resolution by a four-fifths vote of its members declaring that the project can be performed more economically by day labor, or the materials or supplies furnished at a lower price in the open market. Upon adoption of the resolution, it may have the project done in the manner stated without further complying with this chapter.

20168. In case of an emergency, the legislative body may pass a resolution by a four-fifths vote of its members declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property. Upon adoption of the resolution, it may expend any sum required in the emergency without complying with this chapter. If notice for bids to let contracts will not be given, the legislative body shall comply with Chapter 2.5 (commencing with Section 22050).

20168.5. In any city that has agreed to permit the transfer of prisoners or parole violators under Section 2910 or 2910.5 of the Penal Code, or of wards under Section 1753.3 of the Welfare and Institutions Code, the city council may contract for the construction or expansion of facilities to be used for that purpose without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this section. The person to whom the contract is awarded shall execute a bond for faithful performance. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the city council determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the city council and the lowest bid is selected.

20169. Annually before the beginning of the fiscal year, in cities where there is more than one newspaper of general circulation printed and published, the legislative body shall publish a notice inviting bids and contract for the publication of legal notices required to be published in such a newspaper. The contract shall include the printing and publishing of all such legal notices during the fiscal year.

If there is only one such newspaper, the legislative body may contract with it without advertising for bids.

20170. All bids shall be presented under sealed cover and accompanied by one of the following forms of bidder's security:

- (a) Cash.
- (b) Cashier's check made payable to the city.
- (c) A certified check made payable to the city.
- (d) A bidder's bond executed by an admitted surety insurer, made payable to the city.

20171. The security shall be in an amount equal to at least 10 percent of the amount bid. A bid shall not be considered unless one of the forms of bidder's security is enclosed with it.

20172. If the successful bidder fails to execute the contract, the amount of the bidder's security shall be forfeited to the city except as hereinafter provided.

20173. The cash or proceeds shall be deposited in the fund out of which the expenses of preparation and printing of the plans and specifications, estimates of cost, and publication of notice are paid.

20174. The city council may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder. If the legislative body awards the contract to the second lowest bidder, the amount of the lowest bidder's security shall be applied by the city to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder if cash or a check is used, or to the surety on the bidder's bond if a bond is used.

20175.2. (a) (1) A city, with approval of the appropriate city council, may utilize an alternative procedure for bidding on building construction projects in the city in excess of one million dollars (\$1,000,000), except as provided in subdivision (p).

(2) Cities may award the project using either the lowest responsible bidder or by best value.

(b) (1) It is the intent of the Legislature to enable cities to utilize cost-effective options for building and modernizing public facilities. The Legislature also recognizes the national trend, including authorization in California, to allow public entities to utilize design-build contracts as a project delivery method. It is not the intent of the Legislature to authorize this procedure for transportation facilities, including, but not limited to, roads and bridges.

(2) The Legislature also finds and declares that utilizing a design-build contract requires a clear understanding of the roles and responsibilities of each participant in the design-build process. The Legislature also finds that the cost-effective benefits to cities are achieved by shifting the liability

and risk for cost containment and project completion to the design-build entity.

(3) It is the intent of the Legislature to provide an alternative and optional procedure for bidding and building construction projects for cities.

(4) The design-build approach may be used, but is not limited to use, when it is anticipated that it will: reduce project cost, expedite project completion, or provide design features not achievable through the design-bid-build method.

(5) (A) For contracts for public works projects awarded prior to January 1, 2012, if a city council elects to proceed under this section, the city council shall establish and enforce a labor compliance program containing the requirements outlined in Section

1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to any project where the city or the design-build entity has entered into a collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(B) For contracts for public works projects awarded on or after January 1, 2012, the project shall be subject to the requirements of Section 1771.4 of the Labor Code.

(c) As used in this section:

(1) "Best value" means a value determined by objectives relative to price, features, functions, and life-cycle costs.

(2) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(3) "Design-build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services, as needed, pursuant to a design-build contract.

(4) "Project" means the construction of a building and improvements directly related to the construction of a building, but does not include streets and highways, public rail transit, or water resource facilities and infrastructure.

(d) Design-build projects shall progress in a four-step process, as follows:

(1) (A) The city shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the city's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(B) Any architect or engineer retained by the city to assist in the development of the project-specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.

(2) (A) Based on the documents prepared in paragraph (1), the city shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the city. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the city to inform interested parties of the contracting opportunity, to include the methodology that will be used by the city to evaluate proposals,

and specifically if the contract will be awarded to the lowest responsible bidder.

(ii) Significant objective factors which the city reasonably expects to consider in evaluating proposals, including cost or price and all nonprice-related factors.

(iii) The relative importance or weight assigned to each of the factors identified in the request for proposals.

(B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the agency shall specifically disclose whether all evaluation factors, other than cost or price, when combined are:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(C) If the city chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately, or incorporate into the request for proposal, applicable rules and procedures to be observed by the city to ensure that any discussions or negotiations are conducted in good faith.

(3) (A) The city shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the city. In preparing the questionnaire, the city shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:

(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of bid submission who will participate in the design-build contract, including, but not limited to, mechanical subcontractors.

(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, as well as a financial statement that assures the city that the design-build entity has the capacity to complete the project.

(iii) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.

(iv) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code or the federal Occupational Safety and Health Act of 1970 (Public Law 91-596) settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.

(vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance where an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(vii) Any instance where the entity, its owners, officers, or managing employees defaulted on a construction contract.

(viii) Any violations of the Contractors State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA; 26 U.S.C. Sec. 3101 et seq.) withholding requirements settled against any member of the design-build entity.

(ix) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.

(x) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five years preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.

(xi) In the case of a partnership or an association that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all partners or association members agree to be fully liable for the performance under the design-build contract.

(xii) (I) Any instance in which the entity, or any of its members, owners, officers, or managing employees was, during the five years preceding submission of a bid pursuant to this section, determined by a court of competent jurisdiction to have submitted, or legally admitted for purposes of a criminal plea to have submitted either of the following:

(ia) Any claim to any public agency or official in violation of the federal False Claims Act (31 U.S.C. Sec. 3729 et seq.).

(ib) Any claim to any public official in violation of the California False Claims Act (Article 9 (commencing with Section 12650) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code).

(II) Information provided pursuant to this subdivision shall include the name and number of any case filed, the court in which it was filed, and the date on which it was filed. The entity may also provide further information regarding any such instance, including any mitigating or extenuating circumstances that the entity wishes the city to consider.

(B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(4) The city shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(A) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Awards shall be made to the lowest responsible bidder.

(B) The city may use a design-build competition based upon best value and other criteria set forth in paragraph (2) of subdivision

(d). The design-build competition shall include the following elements:

(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight of consideration given to all criteria factors: price, technical design and construction expertise, life-cycle costs over 15

years or more, skilled labor force availability, and acceptable safety record.

(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.

(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the city shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the city's second and third ranked design-build entities.

(v) For purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.

(vi) For purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury/illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category, or if the bidder is a party to an alternative dispute resolution system, as provided for in Section 3201.5 of the Labor Code.

(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services and errors and omissions insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the city.

(f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the city in the design-build package. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the city.

(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(g) Lists of subcontractors, bidders, and bid awards relating to the project shall be submitted by the design-build entity to the awarding body within 14 days of the award. These documents are deemed to be public records and shall be available for public inspection pursuant to this chapter and Article 1 (commencing with Section 6250) of Chapter 3.5 of Division 7 of Title 1 of the Government Code.

(h) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (d) shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the city.

(i) The city may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this section.

(j) Contracts awarded pursuant to this section shall be valid until the project is completed.

(k) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

(1) (1) If the city elects to award a project pursuant to this section, retention proceeds withheld by the city from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(2) In a contract between the design-build entity and the subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the city and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the city and the design-build entity from any payment made by the design-build entity to the subcontractor.

(m) Each city that elects to proceed under this section and uses the design-build method on a public works project shall submit to the Legislative Analyst's Office before December 1, 2014, a report containing a description of each public works project procured through the design-build process that is completed after January 1, 2011, and before November 1, 2014. The report shall include, but shall not be limited to, all of the following information:

(1) The type of project.

(2) The gross square footage of the project.

(3) The design-build entity that was awarded the project.

(4) The estimated and actual project costs.

(5) The estimated and actual length of time to complete the project.

(6) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.

(7) An assessment of the prequalification process and criteria.

(8) An assessment of the effect of retaining 5-percent retention on the project.

(9) A description of the Labor Force Compliance Program and an assessment of the project impact, where required.

(10) A description of the method used to award the contract. If the best value method was used, the report shall describe the factors used to evaluate the bid, including the weighting of each factor and an assessment of the effectiveness of the methodology.

(11) An assessment of the project impact of "skilled labor force availability."

(12) An assessment of the most appropriate uses for the design-build approach.

(n) Any city that elects not to use the authority granted by this section may submit a report to the Legislative Analyst's Office explaining why the city elected not to use the design-build method.

(o) On or before January 1, 2015, the Legislative Analyst's Office shall report to the Legislature on the use of the design-build method by cities pursuant to this section, including the information listed in subdivision (m). The report may include recommendations for modifying or extending this section.

(p) Except as provided in this section, nothing in this act shall be construed to affect the application of any other law.

(q) Before January 1, 2011, the project limitation of one million dollars (\$1,000,000), as set forth in subdivision (a), shall not apply to any city in the Counties of Solano and Yolo, or to the Cities of Stanton and Victorville.

(r) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.



TO: Honorable Mayor and Banning City Council

FROM: Lona N. Laymon, Asst. City Attorney 

DATE: November 10, 2014

RE: Consideration of a Resolution entitled: "A Resolution of the City Council of the City of Banning Adopted to Immunize the City from Litigation and Entitle it to Recover Legal Costs of Frivolous Litigation by Ratifying the Expenditure of Monies for Measure J Educational Outreach and Restating Banning's Commitment to Comply with the Brown Act Consistent with the City's Current Practices and Policies."

RECOMMENDATION: Approve Resolution entitled: "A Resolution of the City Council of the City of Banning Adopted to Immunize the City from Litigation and Entitle it to Recover Legal Costs of Frivolous Litigation by Ratifying the Expenditure of Monies for Measure J Educational Outreach and Restating Banning's Commitment to Comply with the Brown Act Consistent with the City's Current Practices and Policies."

ORDER OF PROCEDURE:

- Request Staff Report
- Council Questions of Staff
- Public Comment
- Discussion
- Motion/Second
- Discussion of Motion
- Call the Question (Roll Call Vote)

EXECUTIVE DISCUSSION: In the last 30 days the City Council received a letter from Robertsons Ready Mix ("Robertsons") in which Robertsons alleged that the City Council violated the Ralph M. Brown Act ("Brown Act") when the Council took action at its September 23, 2014, meeting to set aside funding for public educational outreach on Measure J. Basically, Robertsons claims that (1) the funding was improperly added to the September 23, 2014, agenda, and (2) that the City's Measure J materials constituted improper "campaigning". A complete copy of Robertsons' correspondence on this matter is attached hereto at Exhibit "A". City Staff and the City Attorney believe that Robertsons' claims lack merit.

Pursuant to litigation initiated by Robertsons, a court has already held that the City's expenditures on Measure J were entirely appropriate, legal and neutral in content. (Court Transcripts Attached Hereto as Exhibit "B".)

The City Attorney also does not believe the City violated the Brown Act as alleged by Robertsons when the Council took action to fund Measure J outreach on September 23, 2014. Given the timing of regular City mail distributions and the need to propel public education about Measure J prior to the November 4 election, we believe the funding action was properly added to the agenda on September 23, 2014.

That said, Robertsons has proven to be extremely litigious. Since August of this year, Robertsons already filed two lawsuits against the City with respect to Measure J. Robertsons has also proven itself to have massive funds for the purposes of challenging any and all aspects of Measure J. Thus, notwithstanding our belief that the City's actions were entirely appropriate on the merits, we recommend that the City Council reaffirm its commitment to Brown Act compliance and thus fully protect itself from further litigation from Robertsons.

More specifically, the Government Code provides a procedure whereby the Council can adopt a resolution formally stating its intent to act in compliance with the Brown Act and avoid litigation to have a Court determine whether or not there was any violation of the Brown Act. Adoption of the Resolution will reaffirm the City Council's continued full commitment to act in accordance with the Brown Act.

Finally, Council action on Measure J funding is entirely curable given that Council action was not even required in the first place. Under longstanding City policy, City expenditures of less-than \$25,000 are fully within the purview and approval authority of the City Manager. Here, the City actually spent less than \$8,000 in its distribution of Measure J educational materials. Hence, Council action was never needed for this monetary allocation. And, even if the Council's action was to be voided, the City's minimal funding for mailing educational materials was still within the Manager's authority.

LEGAL ANALYSIS: As the City Council is well aware, the Brown Act generally requires, "At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session." (Gov. Code § 54954.2(a).)

There are exceptions to the agenda requirements, however. One such exception provides that when two-thirds of the Council determine there is a need for immediate action and the need to take action "came to the attention of the local agency subsequent to the agenda being posted." (Gov. Code § 54954.2(b).) We believe this rule came into play at the September 23, 2014, regular meeting. At that time, it was discovered that in order to distribute educational outreach materials in time for the November 4, 2014, election, such materials had to be finalized and prepared for mailing before October 1, 2014. These facts were not known prior to agenda posting as they were discovered only after staff and legal research, as well as consultation with mail/post office services used for regular delivery of City mailers.

The City Council has repeatedly expressed its commitment to comply with all of the provisions of the Brown Act in an effort to provide maximum transparency. In fact, when several provisions of the Brown Act were suspended for a portion of time in 2012, the City Council nevertheless voluntarily continued to comply with all of the provisions of the Brown Act as if they were still in full force and effect.

Even though we believe the City has not engaged in any illegal or improper behavior under the Brown Act, the City may still be forced to expend a significant amount of resources to defend itself if litigation is, in fact, filed as threatened in Exhibit "A".

Unfortunately, the Brown Act does not permit a City to recover its legal costs in the event of litigation unless it demonstrates that a case is frivolous which it defines as "wholly lacking in merit." However, it does allow a City to immunize itself (and thus create facts that would render litigation wholly lacking in merit so that it might be able to recover its costs) by engaging in the so called cure and correct process and/or by issuing an unconditional written commitment not to violate the Brown Act in the future in the manner alleged. Stated otherwise, if a city engages in these curative measures, and a potential litigant nevertheless files suit, the suit would be barred by statute and hence wholly lacking in merit.

Moreover, Robertsons allegations about Council action on Measure J funding are entirely curable given that Council action was not even required. Under longstanding City policy, City expenditures of less-than \$25,000 are fully within the purview and approval authority of the City Manager. Here, the City actually spent less than \$8,000 in its distribution of Measure J educational materials. Council action was never needed for this funding in the first place. And, even if the Council's action was to be voided, the City's minimal funding for mailing educational materials was still within the Manager's authority.

In light of the facts that (1) this issue is resolved pursuant to City policies allowing expenditures within the City Manager's discretion, and (2) currently the City stands by its publicly stated commitment to comply with the provisions of the Brown Act and maximum transparency, City Staff and the City Attorney believe adopting a resolution stating City intent to comply with the Brown Act is consistent with the Council's existing policies and practices. Hence, it is recommending that the City Council take action to adopt the accompanying Resolution entitled:

"A Resolution of the City Council of the City of Banning Adopted to Immunize the City from Litigation and Entitle it to Recover Legal Costs of Frivolous Litigation by Ratifying the Expenditure of Monies for Measure J Educational Outreach and Restating Banning's Commitment to Comply with the Brown Act Consistent with the City's Current Practices and Policies."

Finally, with respect to Robertsons' allegation that the City improperly used its allocated monies towards Measure J, we note that (in litigation initiated by Robertsons) a court has

already held that the City's expenditures on Measure J were entirely appropriate, legal and neutral. The court stated:

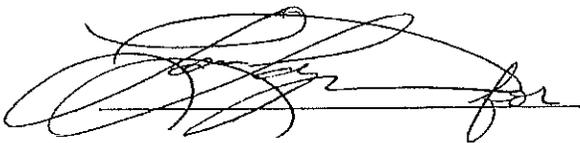
"[L]ooking at the style, tenor, of the [City's] mailer in this case, the mailer regarding "Frequently Asked Questions," the Court has no problem with the information as it's provided by the City of Banning. I don't see any hyperbole. I don't see any misstatement of law or fact, and it's certainly less of a campaign literature than was that as provided in Vargas, where the literature that was actually sent out essentially enumerated several services that were going to be closed down if the proposition did not pass.

In this case, the nature of the writing that the City provided seems to be fairly neutral to the Court and nonconfrontational. So I don't have any problem with the nature of the information contained in the [City's] mailer."

(Court Transcripts Attached Hereto as Exhibit "B".)

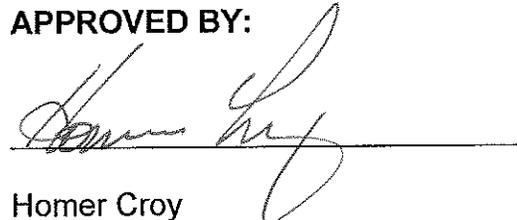
If the City Council wishes to adopt Staff's recommended actions, it should be aware that, by doing so, it is not admitting any violation of the Brown Act. (See, § 54960.1(f) ["The fact that a legislative body has taken a subsequent action to cure or correct an action taken pursuant to this chapter shall not be construed or admissible as evidence of a violation of this chapter]; § 54960.2(c)(1).) Moreover, by adopting the recommended resolution containing the actions discussed above, the City will be immune from liability in that any suit based on the threat of litigation in Exhibit "A" would be statutorily barred. (See, Gov. Code §§ 54960.1(e) and 54960.2(c)(4).)

RECOMMENDED BY:



David J. Aleshire
City Attorney

APPROVED BY:



Homer Croy
Interim City Manager

Attachments:

Exhibit "A": Letter from Robertsons Dated October 16, 2014
Exhibit "B": Court Hearing Transcripts

EXHIBIT A



Jeffer Mangels
Butler & Mitchell LLP

Scott N. Castro
Direct: (415) 984-9618
Fax: (800) 849-9031
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Two Embarcadero Center, 5th Floor
San Francisco, California 94111-3813
(415) 398-8080 (415) 398-5584 Fax
www.jmbm.com

October 16, 2014

VIA EMAIL (C/O CITY CLERK, mcalderson@ci.banning.ca.us)

Mayor Debbie Franklin
Mayor Pro Tem Art Welch
Council Edward Miller
Councilmember Don M. Peterson
Councilmember Jerry Westholder

Re: Violation of the Ralph M. Brown Act - Demand to Cure

Dear Honorable Mayor and Members of the Banning City Council:

As attorneys for and on behalf of Robertson's Ready Mix Concrete, Inc. ("Robertson's") the purpose of this letter is to call to the City of Banning City Council's attention a substantial violation the Ralph M. Brown Act (Government Code §§ 54950 *et seq.*) and to demand that the City immediately cure and correct this violation.

During the September 23, 2014, City Council meeting, the City Council added an item to the agenda for that hearing for the purpose of allocating "\$50,000 for an educational campaign" on Measure J, the tax on Robertson's Banning Mine. (City Council September 23, 2014 Minutes p. 12.) Government Code Section 54954.2(a)(1) requires that the City Council provide at least 72 hour-notice of all items of business to be discussed or acted upon during a public meeting. Knowing that the item was not properly noticed under the Brown Act, the City Council apparently relied upon Government Code Section 54954.2(b)(2), which allows a legislative body to consider and take action on items of business not appearing on the posted agenda

Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision(a). (*Ibid.*)

The only apparent "need to take immediate action" that came to the City Council's attention less than 3 days before the September 23, 2014 meeting was the fact that certain campaign efforts relating to Measure J were being conducted in the City. In other words, the "need for immediate action" relied upon by the City Council was a purported need to respond to

c/o City Clerk
City Council
October 16, 2014
Page 2

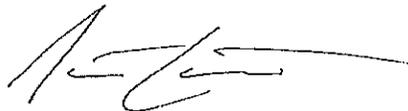
these campaign activities. However, the use of public funds to engage in campaign activity is prohibited under Government Code Section 546954. Thus, the "immediate need" identified by the City Council – allocation of public funds to counteract campaign efforts relating to Measure J – was unlawful.

Indeed, even if the claimed purpose of the allocation was not to campaign in support of Measure J, but rather to support voter "education" as asserted by the City Council and City Attorney during the September 23, 2014 meeting, the City Council voted to place Measure J on the ballot on July 22, 2014, two months before the City Council published its agenda. The City Council had two months before the September 23, 2014 meeting to allocate funds for "educational" purposes. The claim of an "immediate need" arising a few days before the September 23, 2014 meeting thus rings hollow. In short, the Government Code Section 54954.2(b)(2) exemption does not apply, and the City Council's action violated the Brown Act.

Pursuant to Government Code Section 54960.1, Robertson's demands that the City Council cure and correct the illegal action by immediately: (1) taking action to rescind its September 23, 2014 allocation of \$50,000 relating to Measure J; and (2) ceasing all activities by any public official, employee or third party associated with the City relating to Measure J that might be funded by the \$50,000 allocation.

As provided by Government Code Section 54960.1, the City must either promptly cure or correct the challenged action, or inform Robertson's of its decision not to do so. If the City fails to cure or correct as demanded, Robertson's may seek a judicial invalidation of the challenged action as well as attorney's fees and costs.

Very truly yours,



SCOTT N. CASTRO of
Jeffer Mangels Butler & Mitchell LLP

SNC:cg

EXHIBIT B

1 RIVERSIDE, CALIFORNIA; OCTOBER 31, 2014

2 BEFORE THE HONORABLE DANIEL A. OTTOLIA

3 THE COURT: Good morning. Let me call the case of
4 Robertson's Ready Mix versus City of Banning.

5 MR. DEUTSCH: Thank you, your Honor. Joel David
6 Deutsch and Kerry Shapiro appearing on behalf of Robertson's
7 Ready Mix.

8 MR. ONSTOT: Good morning, your Honor. Steven
9 Onstot of Aleshire & Wynder on behalf of the City of Banning,
10 Banning City Council.

11 THE COURT: All right. Good morning, gentlemen.

12 We're here this morning on Robertson's motion for an
13 injunction.

14 I did receive a reply yesterday, and I want to make
15 sure Mr. Onstot has received his copy of the reply.

16 MR. ONSTOT: I have, your Honor.

17 THE COURT: And has had a chance to read the reply?

18 MR. ONSTOT: Yes.

19 THE COURT: All right. Before we begin, let me just
20 preface my comments by saying that I don't look forward to
21 this time of year, because invariably in late October there is
22 always some challenge to an initiative or something having to
23 do with the process, the electoral process. This Court does
24 not like tinkering with the electoral process, because it is a
25 sacred process.

26 However, with that in mind, let me tell you that I
27 have read all the moving papers in this case. In your reply,
28 Mr. Deutsch, you raise the issue of seeking the injunction

1 with respect to some public access channels or council member
2 statements being shown on public access channels. I'm not
3 going to reach that issue, because you raised it for the first
4 time in the reply. I don't think it's fair to Mr. Onstot. I
5 don't know if he's prepared to argue that point here this
6 morning.

7 MR. ONSTOT: I am, your Honor, but if you're not
8 going to consider it, I won't.

9 MR. DEUTSCH: Fair enough, your Honor. I
10 understand.

11 THE COURT: Case law and statutes make clear that
12 public entities are prohibited from engaging in campaign
13 activities, but public entities may make reasonable
14 expenditures for the purpose of giving voters relevant facts
15 to aid them in reaching an informed judgment when voting upon
16 a proposal. The public agency pursues a proper role when it's
17 providing information.

18 However, it is not a proper role when it is
19 campaigning and, unfortunately, that line is not clear. As
20 counsel pointed out, the *Vargas* case and the *Stanson* case seem
21 to be the cases that speak most directly on this point. The
22 *Vargas* case stands for the proposition that the style, tenor,
23 and timing of the communication is what the Court is to look
24 at in determining whether it is proper informational
25 literature or whether it is campaigning. The *Vargas* case also
26 stands for the proposition that the public agency can discuss
27 the merits of a pending measure in the information, and also
28 discuss the impact of the ballot measure in the literature.

1 The public agency is not required to provide alternative views
2 or opposing views in its information literature.

3 Therefore, looking at the style, tenor, of the
4 mailer in this case, the mailer regarding "Frequently Asked
5 Questions," the Court has no problem with the information as
6 it's provided by the City of Banning. I don't see any
7 hyperbole. I don't see any misstatement of law or fact, and
8 it's certainly less of a campaign literature than was that as
9 provided in *Vargas*, where the literature that was actually
10 sent out essentially enumerated several services that were
11 going to be closed down if the proposition did not pass.

12 In this case, the nature of the writing that the
13 City provided seems to be fairly neutral to the Court and
14 nonconfrontational. So I don't have any problem with the
15 nature of the information contained in the mailer.

16 However, I do find troublesome that the funds for a
17 special mailing were appropriated right about the time of the
18 election in late September. The *Vargas* court did say that the
19 timing of the expenditures and the timing of the mailer is one
20 of the factors that the Court can look at.

21 In this case, the minutes of the City Council
22 approving the expenditure do not state who the materials were
23 to be sent to. My understanding is they were sent to
24 registered voters, apparently. But it is clear to this Court
25 that it was being done specially for the election and timed to
26 the election.

27 The *Vargas* court was clear that the means by which
28 material is disseminated is an important factor in determining

1 whether an expenditure is informational or campaigning.
2 Mailings to eligible voters immediately before an election are
3 common campaign tactics. Public entities do provide an
4 analysis of an issue, a ballot issue, before an election, but
5 usually through official ballot materials, not through special
6 mailings on individual measures. Mailings to residents is not
7 a normal means of distributing impartial analysis. It is
8 rather more of a campaign-type activity.

9 So, in sum, I see nothing wrong with the actual
10 substance of the City's publications. However, I am bothered
11 by the timing of the publication. Robertson's argument that
12 the material in the publication says nothing about
13 Robertson's, and Robertson's is the only mining operation in
14 the city, the Court does not find that persuasive, because we
15 can't very well say this tax will only affect Robertson's. If
16 they were to mention Robertson's anywhere in the publication,
17 that would actually be more of a campaign-type literature than
18 not mentioning Robertson's.

19 As far as the statement, "The mining industry can
20 cause environmental impacts, such as street deterioration,
21 dust, noise, and erosion," Robertson's claims it is unfounded
22 and unsubstantiated campaign assertions. I think it's a
23 fairly straightforward statement of fact. You may not agree
24 with that statement of fact, but I don't think it's hyperbole,
25 and Robertson's does not provide any evidence that mining
26 operations do not result in dust, noise, or erosion, or that
27 heavy trucks carrying mining materials cause street
28 deterioration. Therefore, I think the Court can take judicial

1 notice of the fact that mining operation does have certain
2 deleterious effects.

3 So, in sum, the Court finds nothing with the
4 substance of the actual mailers.

5 My understanding is these mailers were placed in
6 with utility bills, correct, and there was a second mailing?

7 MR. ONSTOT: Correct.

8 MR. DEUTSCH: The second one was, your Honor. The
9 first one was a complete special mailing.

10 THE COURT: And the only information in it related
11 to Measure J?

12 MR. DEUTSCH: Correct, your Honor.

13 MR. ONSTOT: Yes.

14 THE COURT: What the Court would do in this case is
15 grant the injunction in part and deny in part. I would
16 prohibit the City from mailing out any special mailers with
17 regards to this proposition before the election. Deny as to
18 all other requests in the injunction.

19 All right. I'll hear from Robertson's.

20 MR. DEUTSCH: Sure. Thank you, your Honor.

21 I do disagree a bit with the substance, but I won't
22 get into that, because I think the conclusion is absolutely
23 correct. They cannot mail any further documents. We don't
24 want them to do that.

25 I would -- and I appreciate the fact that we didn't
26 bring up the website -- rather, the public access channel
27 before, so you're not going to consider that. We did have a
28 problem with that, because one of the council members, maybe

1 two of them, actually has a phrase in the middle of it saying,
2 you know, "Vote in favor of Measure J." Obviously if they
3 were walking the precincts and talking to everybody, they
4 could say whatever they want, as long as public money is not
5 used.

6 I think your conclusion was correct about the timing
7 of these materials. In particular, we had the minutes of an
8 unagendized item back in September where the City, without
9 Robertson's knowing anything about it, decided to spend the
10 \$50,000, clearly, as Aleshire's comments make clear, the city
11 attorney's comments, in response to our side having a number
12 of surveys and campaign materials with our own money, and
13 that's perfectly appropriate. If the mayor or anyone else
14 from the City had used their own money to say, "Vote yes on
15 J," perfectly proper.

16 We understand the election is Tuesday. It's going
17 to go forward. But having not just one mailer, but two
18 mailers, on the eve of the election, the style, tenor, they
19 just don't meet the *Vargas* and *Stanson* tests. I think your
20 Honor's conclusion is correct, and I will accept your judgment
21 on the substance, although I still disagree with it. If the
22 City is prohibited from issuing of any of these additional
23 mailers, then that's fine with Robertson's, your Honor.

24 THE COURT: All right. Thank you.

25 Let me hear from Mr. Onstot.

26 MR. ONSTOT: Nothing further, your Honor.

27 THE COURT: Submit?

28 MR. ONSTOT: Submit.

1 THE COURT: I hope you didn't send out the mailers
2 this morning before the hearing.

3 MR. ONSTOT: Well, I don't think so, your Honor,
4 because the City Hall is closed today. They're closed on
5 Fridays.

6 THE COURT: Oh.

7 MR. ONSTOT: So they'll get word over the weekend,
8 and I think they'll go out on Monday.

9 THE COURT: All right.

10 MR. DEUTSCH: Thank you, your Honor. I thought that
11 was a very well-considered decision, even though I didn't
12 agree with all of it, and I appreciate you putting the time
13 and effort into it in such short notice.

14 MR. ONSTOT: I agree with that, too.

15 THE COURT: Thank you, gentlemen.

16 If you would please submit an order. I know you
17 submitted one, but you're going to have to change it around a
18 little bit, so --

19 MR. DEUTSCH: Yes, your Honor. Can we sit here and
20 change it around?

21 THE COURT: Yes, yes.

22 MR. ONSTOT: Your Honor, we see no need for any type
23 of a bond at all in this case.

24 THE COURT: The Court is not going to require a
25 bond.

26 MR. DEUTSCH: Thank you, your Honor.

27 THE COURT: All right. Thank you.

28 (Proceedings concluded.)

RESOLUTION NO. 2014-82

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING ADOPTED TO IMMUNIZE THE CITY FROM LITIGATION AND ENTITLE IT TO RECOVER LEGAL COSTS OF FRIVOLOUS LITIGATION BY RATIFYING THE EXPENDITURE OF MONIES FOR MEASURE J EDUCATIONAL OUTREACH AND RESTATING BANNING'S COMMITMENT TO COMPLY WITH THE BROWN ACT CONSISTENT WITH THE CITY'S CURRENT PRACTICES AND POLICIES

WHEREAS, on October 16, 2014, the City received a letter threatening litigation over alleged violations of the Brown Act which generally arise from the City of Banning's authorization of expenditures for Measure J educational outreach. (*See*, Exhibit "A" to accompanying staff report, which is incorporated herein as an Exhibit to this Resolution); and

WHEREAS, the City Council asserts it has not engaged in any past Brown Act violations, and indeed City Council action was not even needed to authorize the City's minimal expenditures (less than \$8,000) for mailing Measure J educational materials; and

WHEREAS, longstanding City policy has allowed the City Manager to authorize expenditures under \$25,000; and

WHEREAS, even though the City has not engaged in any illegal or improper behavior under the Brown Act, the City may still be forced to expend significant resources to defend itself if litigation is indeed filed; and

WHEREAS, the Brown Act does not permit a City to recover its legal costs in the event of litigation unless it demonstrates that a case is frivolous or wholly lacking in merit; and

WHEREAS, pursuant to the Brown Act, the City Council can immunize itself from litigation and create facts that would likely render any litigation wholly lacking in merit such that it can recover its legal costs by engaging in the cure and correct process and/or by issuing an unconditional written commitment not to violate the Brown Act in the future in the manner alleged by a potential litigant (i.e., in the manner alleged in Exhibit "A" to the accompanying staff report); and

WHEREAS, the (1) authorization of expenditures for Measure J education is resolved/cureable by City policies permitting staff expenditures under \$25,000, and (2) the Council currently stands by its publically-stated commitment to comply with the provisions of the Brown Act and provide continuing transparency with respect to its actions, and the City Council further believes that adopting a Resolution expressing its unconditional commitment to comply with the Brown Act is consistent with its long standing policies and practices.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BANNING AS FOLLOWS:

SECTION 1. RECITALS. That the above recitals are true and correct and incorporated herein.

SECTION 2. CURE AND CORRECT. The City Council hereby resolves that the Council's September 23, 2014, action to fund Measure J educational outreach is nullified. Such Council action was unnecessary and superfluous because the funding was well within the expenditure authority of the City Manager and staff. Such nullification of the September 23, 2014, funding action thus cures and corrects those allegations set forth in Exhibit "A" to the accompanying staff report.

SECTION 3. EXPRESSION OF UNCONDITIONAL COMMITMENT. The City Council has received the correspondence dated October 16, 2014 (Exhibit "A" to accompanying staff report) alleging that Banning violated the Ralph M. Brown Act in connection with matters arising from Measure J educational outreach. In response to Exhibit "A" and in order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act (and indeed expressly disavowing any violation of the Brown Act as more fully set forth in the accompanying staff report), the City hereby unconditionally resolves that the Council's September 23, 2014, action to fund Measure J educational outreach is nullified and no further such expenditures are to be made, thereby curing any challenged past actions that are alleged to be violations of the Brown Act (which are more fully described in Exhibit "A").

As required by the Brown Act, the City Council hereby provides the following formal notification: the City Council may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." If the City takes such action to rescind, the author of Exhibit "A" will be provided with written notice, sent to the address he specified in Exhibit "A", of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, the party identified in Exhibit "A" will have the right to commence legal action pursuant to the Brown Act. This notice (as well as this Resolution) is to be delivered to the author of Exhibit "A" by mailing it to the address designated in Exhibit "A". This cure is further supported by the fact that longstanding City policy has allowed the City Manager to authorize expenditures under \$25,000, thus demonstrating that City Council action was not even needed to authorize the City's minimal expenditures (less than \$8,000) for mailing Measure J educational materials.

SECTION 4. EFFECTIVE DATE. This Resolution shall become effective immediately upon its adoption by the City Council of the City of Banning.

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause, phrase or word of this Resolution is for any reason held to be invalid by a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution. The City Council hereby declares that it would have passed and adopted this Resolution and each and every provision thereof, irrespective of the fact that any one or more of said provisions may be declared invalid.

SECTION 6. CERTIFICATION: The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 12th day of November, 2014.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

APPROVED AS TO FORM:

Lona N. Laymon, Asst. City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2014-82, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of November, 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie Calderon, City Clerk
City of Banning, California